130-30

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~460.~~ 191

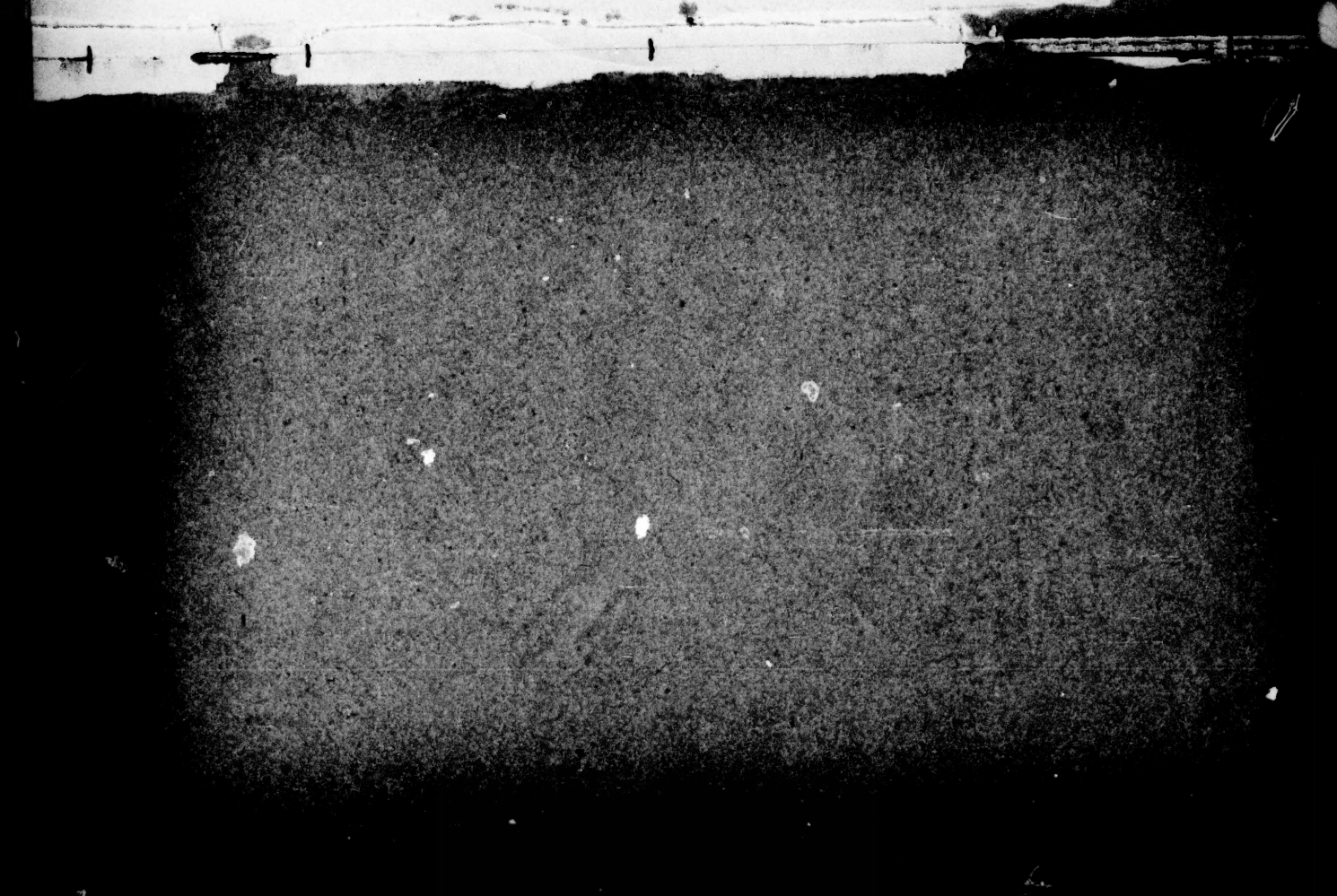
THE UNION TRUST COMPANY OF NEW YORK, APPELLANT,

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 30, 1885.



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a From United States Circuit Court, 5th Judicial Circuit, Northern District of Florida, Eastern Division. In Equity.

UNION TRUST COMPANY OF NEW YORK

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO. & THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

1 In the Circuit Court of the United States for the Northern District of Florida. In Equity.

To the honorable the judges of the circuit court of the United States for the northern district of Florida, in the fifth circuit, sitting in equity:

The Union Trust Company of New York, a corporation created by and existing under the laws of the State of New York and a citizen of the State of New York and hereinafter called the Trust Company, brings this its bill of complaint against the Southern Inland Navigation and Improvement Company, a corporation organized and existing under the laws of the State of Florida and a citizen of the State of Florida (and hereinafter in this bill called the Improvement Company); William D. Bloxham, who is Governor and a citizen of the State of Florida; George P. Raney, who is attorney general and a citizen of the State of Florida; Henry A. L'Engle, who is treasurer and a citizen of the State of Florida; William D. Barnes, who is comptroller and a citizen of the State of Florida, and P. W. White, who is commissioner of the lands and imigration and a citizen of the State of Florida, as trustees of the internal improvement fund of the State of Florida; and thereupon your orator complains and alleges—

First. That your orator at all the times hereinafter mentioned was and now is a corporation duly created by, organized and existing under and by virtue of, the laws of the State of New York, having its place of business in the city and State of New York, and that it is a citizen of said State of New York, and that at all said times had and has full power and authority to execute the trust hereinafter mentioned.

2 Second. That at all the times hereinafter mentioned said Improvement Company was and now is a corporation duly created by, organized and existing under and by virtue of, the laws of the State of Florida, and that it is a citizen of the State of Florida.

Third. That said William D. Bloxham is Governor, said George P. Raney is attorney general, said Henry A. L'Engle is treasurer, W. D. Barnes is comptroller, and said P. W. White is commissioner of lands and immigration, of said State of Florida.

Fourth. That on the sixth day of January, 1855, an act, entitled "An act to provide for and encourage a liberal system of internal improvement in this State," was passed by the Legislature and approved by the Governor of the State of Florida; that by said act

certain lands in the State of Florida and proceeds from the sales of the same were set apart and declared a distinct and separate fund, to be called "the internal improvement fund of the State of Florida," and to be strictly applied according to the provisions of said act; and, for the purposes of securing such application, the said lands and the funds arising from the sales of the same were irrevocably vested in five trustees, to wit, the Governor of the State of Florida, the comptroller of the public accounts of said State, the treasurer of said State, the attorney general of said State, and the register of public lands of said State.

That by constitutional and legislative enactments of the State of Florida since the said first-mentioned act was approved the commissioner of lands and immigration of said State has been substituted for the said register of public lands as one of the trustees of said lands and the proceeds thereof, and the office of the register of public lands has been abolished.

3

That by the provisions of said internal improvement act the said trustees and their successors in office were empowered and directed to hold the said lands in trust for the uses and purposes by said act declared, with power to sell and transfer said lands to purchasers and to receive payments for the same; and by the sixteenth section of said act said trustees were empowered to fix the price of the said lands belonging to said fund, and to make such arrangements for the drainage of the swamp and overflowed lands "as in their judgment might be most advantageous to the internal improvement fund and settlement and cultivation of the land."

Fifth. By the fourth section of said act a canal from the St. John's river to the Indian river was indicated as a proper inland improvement to be aided by and from said improvement fund.

Sixth. That the said defendant Improvement Company had theretofore been duly chartered, authorized, and empowered by the laws of the State of Florida to construct said canal, as well as other connection works of inland navigation and improvement, and in pursuance of said charter and authority purchased of the said defendants, trustees, certain tracts of land belonging to said internal improvement fund, located in the said State, and the said defendant trustees thereafter, to wit, on the 10th day of February, 1871, duly executed and delivered to the said Improvement Company their deed, wherein and whereby said trustees duly conveyed to the said Improvement Company the said lands, which said deed was, in the month of March, 1871, duly recorded in all the counties of said State where the lands so conveyed were located, a copy of which deed is hereunto annexed, marked "Exhibit A," and made a part of this bill of complaint, and wherein the said lands are described.

4

Seventh. Your orator further shows that heretofore, to wit, on the 20th day of March, A. D. 1871, the said defendant, the said Improvement Company, being by law duly authorized, made, executed, and delivered to your orator, as trustee, its certain deed of mortgage to secure the payment of certain bonds of the said Improvement Company mentioned and described in said deed of mortgage, a copy of

which said deed of mortgage is hereto annexed, marked "Exhibit B," and hereby made a part of this bill of complaint; that on or about the — day of March, 1871, the said mortgage deed was duly recorded in all of the counties of the State of Florida wherein any part of the mortgage premises was located.

Eighth. Your orator further shows that pursuant to the terms of the said mortgage deed the said Improvement Company made, executed, signed, and sealed ready for sale and delivery bonds of the kind and description mentioned in said mortgage deed to the amount of five million dollars and delivered the same to your orator, as trustee as aforesaid, to be certified by your orator as provided in said mortgage deed, and that a part of said bonds, amounting to two million dollars, were by your orator certified as provided in said mortgage, and the same were duly delivered to the said de-
5 fendant company at its request, and that the balance of said five millions of bonds were never called for by the said company and still remain in the custody of your orator unissued.

Your orator further shows, upon information and belief, that the said Improvement Company has issued and sold fifty of said bonds, and that the same are now outstanding in the hands of *bona fide* owners and holders thereof; that said owners claim and aver that the said fifty bonds are the only bonds of said Improvement Company secured by said mortgage which have been issued, sold, or delivered by said Improvement Company, and that all and singular the other of said two thousand bonds are still unissued or sold, and in the possession of said Improvement Company, and in its hands or the hands of its agents and brokers, and under the control of said Improvement Company.

Your orator further shows that soon after the execution of said mortgage your orator, at the request of said Improvement Company, sent the said two thousand bonds to the City Bank, in London, England.

That in April, 1878, your orator, at the request of said Improvement Company, by telegram and letter instructed said City Bank to deliver said two thousand bonds to Smith, Payne & Smith, bankers, in London, England, to the credit of Edward James Reed, M. P., upon the order of W. H. Bennett, Esq., upon payment to said City Bank for the account of your orator of the sum of eight hundred pounds sterling for and on account of the commissions of your orator, as trustee in said mortgage; that said City Bank accounted for and paid to your orator the said sum of eight hundred pounds sterling.

6 Except as above stated, your orator has no knowledge or information of any of said two thousand bonds having been issued or sold by said Improvement Company.

Ninth. Your orator further shows that payment of the interest on said fifty bonds so sold as aforesaid for the six months prior to the first day of May, 1872, becoming due on that day, was duly demanded and payment thereof was refused; and your orator is informed and believes and therefore alleges that the coupons annexed to said bonds for interest thereafter maturing on the first days of

November and May of each year since said first day of May, 1872, were duly presented for payment and payment demanded and refused; that said default in payment of interest has continued for more than — period of six months prior to the commencement of this suit.

Your orator further shows that the said defendant company has utterly failed and refused to pay to your orator the installments of the sinking fund, amounting to a sum equal to one per cent. on the bonds so issued on the 1st day of May, 1874, and on the 1st day of May of each year since that date to the present time, with the interest thereon at the rate of seven per cent., as provided for in the said mortgage deed.

Tenth. And your orator further shows that your orator has elected that the whole principal sum secured by said bonds and mortgage be due and payable.

And your orator further shows that by reason of said defaults
that there is not due and payable the whole of the principal
7 sum of such bonds as may have been issued and sold as aforesaid, and also the whole amount of the interest coupons which have matured thereupon on the first days of May and November every year on and since the first day of May, 1872; and your orator has been requested in writing by Henry C. Hepburn, the sole owner and holder of all the said fifty bonds so issued as aforesaid, to institute appropriate legal proceedings to enfore the rights of said bondholders under said mortgage deed.

Eleventh. Your orator has been informed and believes that on the 3rd day of November, 1870, one Francis Vose and others, holders of unpaid coupons of bonds issued by certain railroad companies who had availed themselves of the provisions of said internal improvement act, filed their bill of complaint in this honorable court against Harrison Reed and others, the then trustees of the said internal improvement fund, and that on the — day of November, 1871, the said Improvement Company was made a party defendant in said suit; and your orator alleges that the object of said suit was to establish the prior lien of the said coupons upon the said internal improvement fund lands, and that after a long litigation said coupons were decreed by this honorable court in said suit to be a prior lien upon said lands and entitled to payment out of the proceeds of said lands, and that the said trustees, by sales of large tracts of said land, have paid all the said coupons so decreed to be paid, and that the lien so decreed to exist upon said land has been satisfied and discharged.

Twelfth. And your orator alleges that in the progress of said litigation various interlocutory orders and decrees were made,
8 and, among others, one dated December 4, 1873, the fifth clause of which was as follows: "It is further ordered, adjudged, and decreed that the contracts or agreements entered into by the trustees of the internal improvement fund with the corporation known as the Southern Inland Navigation and Improvement Company be rescinded, and the same are hereby declared to be null and void, and the lands undertaken to be conveyed or contracted to be conveyed shall be restored to the said internal improve-

ment fund or to be subjected to sale by the agents appointed by this court rendered during this term in accordance to the provisions of said decree."

And your orator alleges that your orator was not a party to said suit and had no notice of its proceedings or of the pendency of this litigation by its officers, solicitors, or agents, and such knowledge as they now have has only recently been acquired by reason of the necessity of taking action to collect the bonds and coupons secured by the said mortgage deed to your orator and filing this bill of complaint.

Thirteenth. And your orator alleges that the said trustees have, since the making of said deed to the said Improvement Company and the making of the said mortgage deed by said Improvement Company to your orator, *have* assumed to convey to other persons and corporations and have assumed to make, grant, and convey to other persons or corporations large tracts of land embraced and described in the said deed to the said Improvement Company and conveyed to your orator by the said mortgage deed, as your orator is informed and believes, to the amount of upwards of one hundred thousand acres of land, and your orator is informed and be-
9 lieves that the said defendant trustees are now attempting to sell and are offering for sale all of the said lands so described in said conveyance, and claims the right to dispose of them by grant, sale, or contract of sale, notwithstanding their said conveyance to the said Improvement Company and the conveyance to your orator and *cestuis que trust.*

And your orator alleges that said Improvement Company has no other property than that embraced in the mortgage deed to pay the bonds secured by the said mortgage deed to your orator, and that the franchises, rights, and privileges to perform the said work of inland improvement are not of sufficient value to pay the said bonds and coupons, and that unless the said trustees are restrained from the further selling and disposing of said lands and the lands already conveyed are subjected to the payment of the debt of your orator its *cestuis que trust* will be delayed or totally defeated in their action to secure the payment of the said bonds and coupons.

To the end, therefore, that it may be adjudged that the said defendants, trustees of said internal improvement fund, have no estate, right, title, or interest of, in, or to said lands and no right to sell or convey the same, and that the said lands are subject to the lien of said mortgage deed of said Improvement Company to your orator, and that the lien of said mortgage deed to your orator is superior to any interest or estate the said defendants, trustees, may have of, in, or to said lands, and that the said defendants, trustees, may, by the order of this court *pendente lite* and by the final decree of this court, be enjoined and prohibited from selling or offering for sale the said lands or any part thereof, and to the end that it may be ascertained and adjudged how many of said bonds
10 secured by said mortgage deed have been issued and are now outstanding and what amount is due thereon, and to the end that a receiver of all and singular the mortgaged property may

be appointed, with the usual powers of receivers in like cases, and that the defendant, said Improvement Company, may be adjudged to pay to your orator the amount so found due upon the bonds so adjudged to be issued and outstanding, and that in default thereof by a certain time that all and singular the said mortgaged property may be sold and the trusts declared in said mortgaged deed may be executed by and under the direction of this honorable court, and that your orator may have such other and further relief in the premises as the nature of the case and the circumstances may require and to this court shall seem proper—

May it please your honors to appoint a receiver of said property and to grant unto your orator a writ of injunction, issuing out of and under the seal of this honorable court or by one of your honors, according to the statute in such cases made and provided, of the tenor and purport aforesaid.

And may it please your honors to grant unto your orator a subpœna of the United States of America, issuing out of and under the seal of this court, directed to the Southern Inland Navigation and Improvement Company, William D. Bloxham, George P. Raney, Henry A. L'Engle, William D. Barnes, and P. W. White, all of whom are citizens of the State of Florida, therein and thereby respectively commanding them and each of them, under a certain penalty therein to be named, to be and appear before this honorable court, and then and there to answer all and singular the premises and to stand to, perform, and abide by the said order, direction, and decree as may be made against them in the premises, as shall
11 seem meet and agreeable to equity and good conscience; and your orator, as in duty bound, will ever pray, etc.

UNION TRUST COMPANY
OF NEW YORK.
WILLIAM KNIGHT, *Pres't.*

JAMES B. C. DREW,
Solicitor for Complainant.
WHEELER H. BIRKHAM,
Of Counsel for Complainant, and
WILLIAM FULLERTON,
Of Counsel for Complainant.

To Philip Walter, Esq.:

Please issue subpœnas to the above-named defendants, returnable at May rules day, 1883.

J. B. C. DREW,
Solicitor for Complainants.

11½ [Endorsed:] U. S. circuit court, Florida. Union Trust Company of N. Y. *vs.* Southern Inland Navigation and Improvement Company. Bill of complaint. Filed April 12, 1883. Philip Walter, clerk.

12 Know all men by these presents that the trustees of the internal improvement fund, under an act of the General

Assembly of the State of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, A. D. one thousand eight hundred and fifty-five, and an act entitled "An act to organize the Southern Inland Navigation and Improvement Company," approved July twenty-eight, A. D. one thousand eight hundred and sixty-eight, for and in consideration of the sum of one dollar, to them in hand paid by the Southern Inland Navigation and Improvement Company of the State of Florida, have granted, bargained, and sold, and do by these presents grant, bargain, sell, and convey, unto the said Southern Inland Navigation and Improvement Company and to its representatives and assigns forever the following-described lands, situated in the counties of Marion, Putnam, St. Johns, Orange, Volusia, and Brevard, to wit:

In township eleven south of range twenty-six east:

South half of northeast quarter, northeast quarter of northwest quarter, and lots one and two of section one; lot two of northeast quarter, lot two of northwest quarter, southwest quarter of southeast quarter, and southeast quarter of southwest quarter of section two; lot one of section three; northeast quarter of northeast quarter, southeast quarter of southeast quarter of section eleven; northwest quarter of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and lots three and four of section twelve; lots one and four of section thirteen; east half of northeast quarter and lot two of section fourteen; northwest quarter of northwest quarter and lot two
13 of section twenty-four, containing twelve hundred and eleven and eighty-eight hundredths acres.

In township twelve south of range twenty-six east:

All of fractional section three west of river, fractional section four west of river, fractional section five west of river, northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and south fractional half of section six; all of fractional section eight west of river, all of fractional section nine west of river, lot one and south half of lot two of section seventeen; lot one of section eighteen; lot one west of river, north half of lot two west of river, lot four west of river, southeast quarter of southwest quarter west of river, of section twenty-one; northeast quarter of northeast quarter of section twenty-three; east half of southeast quarter, west half of southwest quarter, and southeast quarter of southwest quarter of section twenty-five; lots one, two, and three west of river, of section twenty-six; lots one and two, east half of southeast quarter, southwest quarter of southeast quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 27; east half of northeast quarter, northwest quarter of northwest quarter of northeast quarter, and south half of southeast quarter of section 28; the west half of the east half of section 33; northeast quarter of northeast quarter, west half of northeast quarter, west half of southeast quarter, and east half of southwest quarter of section 34; lots 2, 3, and 4 west of river and lots 1, 5, 6, 7, and 8 east of river of section 35; northeast quarter of northeast quarter, west half, east half of southeast quarter, and

southwest quarter of southeast quarter of section 36, containing three thousand seven hundred and eighty-six and forty-
14 hundredths acres.

In township thirteen south of range twenty-six east:

Northeast quarter, north half of southeast quarter, and lots 2 and 3 of section 1; all of fractional sections 2 and 3; lots 1 and 2 of section 4; lots 2, 3, and 4 of section 10; east half of northeast quarter, southwest quarter of northeast quarter, and lot 1 of section 17, containing thirteen hundred and eighteen and twelve-hundredths acres.

In township fourteen south of range twenty-six east:

Northeast quarter of southeast quarter of section 7; northwest quarter of southwest quarter of section 8; northeast quarter of southwest quarter, west half of southwest quarter of section 15; northeast quarter of southeast quarter, northwest quarter of southeast quarter and northeast quarter of southwest quarter of section 17; east half of southeast quarter of section 24; northeast quarter of northeast quarter of section 25, containing four — and forty-one and two-hundredths acres.

In township fifteen south of range twenty-six east:

All of fractional sections 3; lots 1 and 2 of section 4; lot 1 and north half of lot 2, in section 5; south half of lot 1, in section 8; all of fractional section 9; southeast quarter of northeast quarter of section 20; northeast quarter of northwest quarter and west half of northwest quarter of section 21; all of fractional section 22, containing five hundred and thirteen and thirty-one hundredths acres.

In township eleven south of range twenty-seven east:

Lot 1 of section 8; northeast quarter, north half of southeast quarter, northeast — of southwest quarter, and lot one of section 21; all of fractional section 22; all of fractional section 23;
15 east half of northwest quarter and lot one of section 27, containing ten hundred and sixty-five and twenty-four hundredths acres.

In township twelve south of range twenty-seven east:

West half of northwest quarter and west half of section 11; west half of southeast quarter and west half of section 14; south half of northeast quarter, southeast quarter of southwest quarter, and southeast quarter of section 17; southeast quarter of southwest quarter and south half of southeast quarter of section 18; west half of southwest quarter, northeast — of southwest quarter, north half of southeast quarter and north half of section 19; east half of northeast quarter, northwest quarter and north half of southwest quarter of section 20; east half of northeast quarter and northwest quarter of southeast quarter of section 21; northwest quarter of northeast quarter, south half of southeast quarter, and west half of section 22; southeast quarter of northeast quarter, southwest quarter of northeast quarter, and northwest quarter of southeast quarter of section 25; southeast quarter of northeast quarter of section 26; southeast quarter of northeast quarter, northeast quarter of northwest quarter, northwest quarter of southeast quarter, east half of southwest quarter and southwest quarter of section 27; northwest quarter of

southwest quarter of section 28; east half of southwest quarter and southeast quarter of section 29; northwest quarter of northeast quarter, south half of northeast quarter, *south half of northeast quarter*, north half of northwest quarter, south half of the southwest quarter, and southeast quarter of section 31; northeast quarter of northwest quarter, south half of northwest quarter, southwest quarter and east half of section 32; northeast quarter, northwest
16 quarter, west half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section 33; north half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, southeast quarter of southeast quarter of section 34; northeast quarter of northeast quarter, southwest quarter of northeast quarter, southwest quarter of northwest quarter, west half of southeast quarter, and southwest quarter of section 35, containing five thousand seven hundred and ninety and thirty-seven hundredths acres.

In township thirteen south of range twenty-seven east:

Southwest quarter of northwest quarter and west half of southwest quarter of section 1; southeast quarter of northeast quarter, east half of southeast quarter, southwest quarter of southeast quarter, and northwest quarter of southwest quarter of section 2; all of sections 3, 4, 5, and 6; lots 1 and 2 of section 7; all of fractional section 8; northwest quarter, west half of northeast quarter, northeast quarter of northeast quarter, northeast quarter of southwest quarter, and west — of southwest quarter of section 9; northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter, southwest quarter of southwest quarter, northeast quarter of southwest quarter, and southeast quarter of southeast quarter of section 10; east half of southwest quarter, southwest quarter of southwest quarter, southeast quarter and north half of section 11; west half of northwest quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 13; all of sections 14 and 15; lots 1, 3, 4, and 5 of section 21; all of section 22; southwest quarter and west half of northwest quarter of section 23; southwest
17 quarter of southeast quarter and lots 2, 3, 4, 5, 6, 7, 9, and 10 of section 26; all of fractional sections 27 and 35; east half of northwest quarter, west half of southeast quarter, northeast quarter of southwest quarter, and west half of southwest quarter of section 36, containing eight thousand four hundred and fifty-five and fifty-hundredths acres.

In township fourteen south of range twenty-seven east:

All of fractional sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36, containing three thousand one hundred and forty-five and twenty-nine-hundredths acres.

In township 11 south of range twenty-eight east:

All of sections 1, 2, 3, 4, and 5; northeast quarter of northwest quarter of section 6; south half of southeast quarter of section 7; southeast quarter of northeast quarter, west half of northeast quarter, southeast quarter and south half of southwest quarter of section 8; all of sections 9, 10, 11, 12, 13, 14, and 15; west half of northeast quarter, west half of southeast quarter, and west half of section 17;

northwest quarter, northwest quarter of southwest quarter, east half of southwest quarter, and east half of section 18; northwest quarter of southwest quarter, east half of southwest quarter, southeast quarter and north half of section 19; west half of northeast quarter, southeast quarter and west half of section 20; east half of northwest quarter, southwest quarter and east half of section 21; all of sections 22, 23, 24, 25, 26, and 27; northwest quarter of southwest quarter, east half of southwest quarter, southeast quarter and north half of section 28; north half and lots 1, 2, 3, and 4 of section 29; all of fractional section 30; east half of northeast quarter, and lots 1, 2, and 4 of section 32; north half and lots 1 and 2 of section 18 33; north half and lots 1, 2, and 4 of section 34; all of sections 35 and 36, containing eighteen thousand three hundred and sixteen and forty-nine hundredths acres.

In township twelve south of range twenty-eight east:

All of section 1; all of fractional section 2; northwest quarter of southwest quarter, lots 1 and 2, and north half of section 3; northeast quarter, north half of southeast quarter, southwest quarter of southeast quarter, and lots 3, 4, 5, 7, and 8 of section 4; northeast quarter and lots 2, 4, 5, 6, 7, 8, and 9 of section 9; all of fractional sections 10, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27; west half of northwest quarter of section 30; east half of southeast quarter of section 31, lots 5 and 6 of section 32, and fractional section 36, containing six thousand eight hundred and ninety-eight and eighty-hundredths acres.

In township thirteen south of range twenty-eight east:

All of fractional sections 1 and 5; lots 1, 7, 8, 9, 10, 13, and 14 of section 6; lots 1 and 6 of section 7; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section 8; lots 6, 7, and 8 of section 9; all of fractional section 11; all of sections 12 and 13; west half of section 14; west half of northeast quarter, northwest quarter, and south half of section 15; north half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, northwest quarter of southeast quarter, south half of southeast quarter, and northwest quarter of southeast quarter of section 17; north half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of southeast quarter, west half of southeast quarter, and northeast quarter of southwest quarter of section 20; northeast quarter of northeast quarter, northeast quarter of northwest quarter, and southwest 19 quarter of southwest quarter of section 21; north half, northeast quarter of southeast quarter, southwest quarter of southeast quarter, and southwest quarter of southwest quarter of section 22; north half of northeast quarter, northwest quarter, and west half of southwest quarter of section 23; north half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and east half of southwest quarter of section 24; northeast quarter of northeast quarter, west half of northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, west

half of southwest quarter, southeast quarter of southwest quarter, and southeast *corner* of section 25; east half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section 26; all of section 27; northwest quarter of northwest quarter, south half of southwest quarter, and east half of section 28; west half of northeast quarter of section 29; lots 5 and 6 of section 31; east half of northeast quarter and east half of southeast quarter of section 32; northeast quarter, east half of northwest quarter, and southwest quarter of section 33; all of sections 34, 35, and 36, containing ten thousand nine hundred and thirty and eighty-three hundredth acres.

In township fourteen south of range twenty-eight east:

All of sections 1 and 2; southwest quarter of southeast quarter, east half of southeast quarter, southwest quarter and north half of section 3; east half of northwest quarter, northwest quarter of northwest quarter and east half of section 4; southeast quarter of northeast quarter and south half of southwest quarter of section 5; southeast quarter of southeast quarter and lots 1, 2, 3, and 4 of section 6; lots 1, 2, and 3 and northeast quarter of section 7; southeast quarter and north half of section 8; northwest quarter of northwest quarter, north half of southeast quarter and northwest quarter of southwest quarter of section 9; north half of section 10; southeast quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter, and north half of section 11; all of sections 12 and 13; northeast quarter and south half of section 14; east half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, south half of southwest quarter, and southeast quarter of section 15; east half of northeast quarter, northwest quarter of northeast quarter, northwest quarter and south half of section 17; all of sections 19 and 20; east half of northeast quarter, west half of the northwest quarter, and east half of southeast quarter, and west half of southwest quarter of section 21; south half of northeast quarter, northwest quarter and south half of section 22; northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, northeast quarter of southeast quarter, west half of southeast quarter, and north half of southwest quarter of section 23; north half of northeast quarter, northwest quarter and north half of southwest quarter of section 24; southwest quarter of southeast quarter and northwest quarter of southwest quarter of section 25; northwest quarter of northeast quarter and northwest quarter of section 26; west half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, and northwest quarter of southwest quarter of section 27; east half of northeast quarter, southeast quarter, and southeast quarter of southwest quarter of section 28; northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter and west half of southwest quarter of section 29; all fractional sections 30 and 31; west half of northwest quarter of section 32; northeast quarter, east half of northwest quarter, and south half of section 33; east half of southeast quarter of section 34; southwest quarter of southeast quarter and southwest quarter of section 35;

northwest quarter of northeast quarter and east half of southeast quarter of section 36, containing 13,300 and 63 and 52-hundredths acres.

In township fifteen south of range twenty-eight east:

Lots 1 and 2, north half of southeast quarter and northwest quarter of southwest quarter of section 1; lot 3, north half of lot 4, and west half of southeast quarter of section 2; lots 1, 2, and 3 and southwest quarter of section 3; northwest quarter and west half of southwest quarter of section 10; northwest quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section 11; south half of northeast quarter and south half of section 13; southeast quarter of section 14; west half of northwest quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 15; west half of northwest quarter, east half of northeast quarter, east half of southeast quarter, and northwest quarter of southwest quarter of section 22; north half of northeast quarter, southwest quarter of northeast quarter, north half of southeast quarter, southwest quarter of southeast quarter, and west half of section 23; southwest quarter of southwest quarter, northeast quarter of southwest quarter, and north half of section 24; northwest quarter of northwest quarter, east half of northwest quarter, north-
22 east quarter of southwest quarter, south half of southwest quarter, and east half of section 26; west half — northwest quarter, south half of southeast quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 27; north half of northwest quarter, southeast quarter of northwest quarter, southeast quarter, and east half of section 34; all of section 35; south half of lot 1, lot 2, west half of northwest quarter, and southwest quarter of section 36, containing five thousand seven hundred and seventy-eight and twenty-four hundredths acres.

In township sixteen south of range twenty-eight east:

All of fractional section 1; all of fractional sections 11 and 12; south half of lots 1 and 2; lots 3, 4, 5, 6, 7, and 8 of section 13; all of fractional sections 14 and 15; all of fractional sections 18, 19, and 20; lots 1 and 5 of section 21; lots 1, 2, 3, 4, 8, 9, 13, 14, 15, and 16 of section 22; all of sections 23, 24, and 25; lots 1, 2, 3, 4, 5, 8, and 11 of section 26; north half and lots 1 and 2 of section 27; south half of lots 1 and 2, lot 4, and southeast quarter of section 28; northeast quarter, west half of southeast quarter, and lots 1, 2, 3, and 4 of section 33; lot 4 and south half of lot 5 of section 34; all of fractional section 36, containing six thousand one hundred and eighty-nine hundredths acres.

In township seventeen south of range twenty-eight east:

North half of lots 5, 6, and 7; lots 1, 2, 3, 8, and 9 of section 3; lots 3, 4, 6, 7, 8, and south half of lot 5, section 4; lots 2, 3, 4, 5, 6, 7, and north — of lots 8 and 9 of section 5; northeast quarter, southeast quarter, and south half of southwest quarter of section eight; southeast quarter and north half of section 9; north half of lots 4 and 6 and lot 5 of section 13; southeast quarter of northeast
23 quarter, southeast quarter of southwest quarter, and south-

east quarter of section 14; north half of northeast quarter and and north half of northwest quarter of section 17; east half of northeast quarter and southeast quarter of section 21; northwest quarter of northwest quarter of section 22; west half of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter of southwest quarter, and east half of section twenty-three; lots 4 and 5 of section 24; northwest quarter of northeast quarter, west half of southeast quarter, and west half of section 25; northwest quarter of northwest quarter, southeast quarter of northwest quarter, southwest quarter and southeast half of section 26; southeast quarter, south half of southwest quarter, northeast quarter of southwest quarter of section 27; east half of southeast quarter, southwest quarter of southeast quarter, and southwest quarter of southwest quarter of section 28; south half of southeast quarter, southeast quarter of southwest quarter, and northwest quarter of northeast quarter of section 29; lots 3, 4, 5, 6, 7, 8, 9, and 10 of section 31; southwest quarter of southwest quarter and northwest quarter of section 32; north half of northeast quarter and northwest quarter of northwest quarter of section 33; northwest quarter, west half of southwest quarter, and east half of section 34; all fractional sections 35 and 36, containing seven thousand six hundred and eighty-eight and fifty-three hundredths acres.

In township eighteen south of range twenty-eight east:

West half of northeast quarter, fractional northwest quarter, southwest quarter of southeast quarter, and south half of southwest quarter of section 1; fractional northeast quarter and north half of northwest quarter of section 2; northeast quarter of northwest quarter, west half of northwest quarter, southeast quarter of southeast
24 quarter, and northwest quarter of southwest quarter of section 3; southeast quarter of northeast quarter, northeast quarter of southeast quarter, west half of southeast quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 4; all of fractional section 8; northwest quarter of northeast quarter, west half of southwest quarter, northeast quarter of northwest quarter, and west half of fractional northwest quarter of section 9; northwest quarter of northeast quarter and southwest quarter of southeast quarter of section 10; east half of northeast quarter of section 11; northwest quarter of northeast quarter of northwest quarter, west half of northwest quarter, and southeast quarter of section 12; northeast quarter of northeast quarter, southwest quarter of northeast quarter, west half of southeast quarter, and southeast quarter of southwest quarter of section 13; west half of southwest quarter of section 14; east half of southeast quarter and southwest quarter of southeast quarter of section 15; northeast quarter of northeast quarter, west half of northwest quarter, and southeast quarter of southeast quarter of section 17; all of section 20; south half of northeast quarter, south half of northwest quarter, and south half of section 21; southwest quarter of northwest quarter, southwest quarter of southeast quarter, and southwest quarter of section 22; southeast quarter of northeast quarter, northwest quarter of northeast quarter, south half of southeast quarter, and south half of

southwest quarter of section 23; east half of northwest quarter, southwest quarter of northwest quarter, and southwest quarter of section 24; northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter, and north half of southwest quarter of section 26; all of section 27; east half northwest quarter, and
25 east half of southwest quarter of section 28; north half of northeast quarter of section 29; *half* half of northeast quarter and north half of northwest quarter of section 34; south half of southwest quarter, southeast quarter of southeast quarter, northwest quarter of southeast quarter, and northeast quarter of northwest quarter of section 35, containing six thousand fifty-seven and sixty-eight hundredths acres.

In township eleven south of range twenty-nine east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and thirty-eight and eighty-six hundredths acres.

In township twelve south of range twenty-nine east:

Northeast quarter of northeast quarter, west half of northeast quarter, west half of southeast quarter, and west half of section one; all of sections 2, 3, 4, 5, 6, 7, 8, 9, and 10; southeast quarter, east half of southwest quarter, and north half, section 11; all of sections 12, 13, 14, 15, 17, and 18 and all fractional section 19; all the sections 20 and 21; northeast quarter of northwest quarter, west half of northwest quarter, and south half of section 22; all of sections 23, 24, 24, 25, 26, 27, 28, 29, and 30; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of section 31; north half of southeast quarter, southwest quarter, and north half of section 32; southeast quarter and north half of section 33; north half of southwest quarter, southeast quarter of southwest quarter, and north half of section 34; all of sections 35 and 36, containing twenty-one thousand seven hundred and eight and fifty-six hundredths acres.

In township thirteen south of range twenty-nine east:

26 All of section 1; northwest quarter of southwest quarter, east half of southwest quarter, southeast quarter and north half of section 2; east half of northwest quarter, southwest quarter of northwest quarter, southwest quarter and east half of section 3; northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section 4; southeast quarter of southeast quarter and west half of section 5; all of sections 6 and 7; east half of southeast quarter, southeast quarter, and north half of section 8; northeast quarter of northeast quarter, north half of northwest quarter, & south half of section 9; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section 10; all of fractional section 11; all of section 12; all of fractional sections 13, 14, and 15; all of section 17; northwest quarter of southwest quarter, southeast quarter of southwest quarter, southeast quarter and north half of section 18; all of section 19; north half of northeast quarter,

northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter of southwest quarter, and west half of southwest quarter of section 20; all of sections 21, 22, 24, 25, and 26; west half of southeast quarter, southwest quarter and north half of section 27; all of sections 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing eighteen thousand three hundred and thirty-two and forty-three hundredths —.

In township fourteen south of range twenty-nine east:

All of sections 1, 2, 3, 4, 5, and 6; all of fractional sections 7, 8, and 9; all of sections 10, 11, 12, 13, 14, and 15; all of fractional sections 17 and 18; lots 1, 2, 3, and 4 of section 19; lots 1, 2, 3, 6, 7, 8, 9, 10, and 11 of section 20; east half of southeast 27 quarter, southwest quarter of southeast quarter, southwest quarter of southeast quarter, southwest quarter, and north half of section 21; all of sections 22, 23, 24, 25, 26, 27, and 28; north half of southwest quarter, southeast quarter, and north half of section 29; northeast quarter of southeast quarter, and northeast quarter of section 30; northwest quarter of northwest quarter, southeast quarter and southeast quarter of southwest quarter of section 31; northeast quarter, southeast quarter of northwest quarter, northeast quarter of southeast quarter, west half of southeast quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section 32; north half of northeast quarter and west half of section 33; east half of northwest quarter of northwest quarter and east half of section 34; northeast quarter of northwest quarter, west half of northwest quarter, west half of southwest quarter, and east half of section 35; all of section 36, containing eighteen thousand five hundred and sixty-one and forty-nine one-hundredths acres.

In township fifteen south of range twenty-nine east:

Lot 1 and south half of lot 3 and south half of section one; lots 3 and 4, southeast quarter of southeast quarter and west half of southwest quarter of section 2; south half of lot 1, east half of southeast quarter and south half of southwest quarter of section 3; lot 4 and southeast quarter of southwest quarter of section 4; lots 3 — 4, southeast quarter, east half of southwest quarter and southwest quarter of southwest quarter of section five; lots 1 and 4, southwest quarter of section 6; northwest quarter of northeast quarter and northeast quarter of northwest quarter of section 7; southeast quarter of northeast quarter, southwest quarter of northwest quarter and northeast quarter of southeast quarter of section 8; northwest 28 quarter of northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter and southwest quarter of southwest quarter of section 9; southwest quarter of southwest quarter of section 10; northeast quarter of northeast quarter, southwest quarter of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter and west half of southeast quarter of section 11; northwest quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter and northeast quarter of southeast quarter of section 12; southeast quarter of southeast quarter of section 13; northwest

quarter of northeast quarter, southeast quarter of northwest quarter and west half of southwest quarter of section 14; northwest quarter of northwest quarter of section 15; northeast quarter of northeast quarter, east half of southeast quarter of northwest quarter of southwest quarter of section 17; northeast quarter of southeast quarter, southwest quarter of southeast quarter and southwest quarter of section 18; north half of northwest quarter and southeast quarter of southeast quarter of section 19; southwest quarter of southwest quarter of section 20; east half of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and east half of section 21; northeast quarter of northeast quarter, southwest quarter of northeast quarter, southwest quarter of northwest quarter, and south half of section 22; southeast quarter and south half of southwest quarter of section 23; southwest quarter of northwest quarter of section 24; west half of northwest quarter, and lots 3, 6, and 8 of section 25; west half of northwest quarter and lot 4 of section 26; north half of southwest quarter, north half of southeast quarter, and north half of section 27; all of sections 28 and
29 29; north half of northeast quarter, northeast quarter of northwest quarter, and southwest quarter of northwest quarter of section 30; lot one and south half of section 31; all of sections 32 and 33; all of fractional section 34; northwest quarter of northeast quarter and northeast quarter of northwest quarter of section 35; north half of northeast quarter, east half of northwest quarter, and lot 1 of section 36, containing nine thousand five hundred and forty-four hundredths acres.

In township sixteen south of range twenty-nine east:

Northwest quarter of lots 1 and 4 of section 3; all of faactional sections 4, 5, and 6, containing one thousand five hundred and thirteen and thirteen-hundredths acres.

In township seventeen south of range twenty-nine east:

All of fractional section 6; east half, east half of northwest — and east half of southwest quarter of section 7; southwest quarter of southwest quarter of section 17; southeast quarter of southeast quarter of section 18; northeast quarter of northeast quarter of section 19; northwest quarter of section 20; west half of northwest quarter and south half of southwest quarter of section 21; northeast quarter, north half of northwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section 28; southeast quarter of northeast quarter and southwest quarter of southwest quarter of section 29; southwest quarter of southwest quarter of section 30; west half of southwest quarter of section 31; southeast quarter of southwest quarter of section 32; north half of northwest quarter of section 33; east half of southeast quarter of section 34; east half of southeast quarter and northwest quarter of southeast quarter of section 28, containing eighteen hundred and eighty-four and eighty-two hundredths acres.

30 In township eighteen south of range twenty-nine east:

All of sections 1 and 2; east half of northeast quarter, southwest quarter of northeast quarter, and east half of southeast quarter of section 3; southwest quarter of southeast quarter and

southeast quarter of southwest quarter of section 6; southwest quarter of northwest quarter of section 7; east half of section 10; all of sections 11, 12, 13, 14, and 15; east half of section 18; east half of southeast quarter and east half of northeast quarter of section 19; west half of northwest quarter and west half of southwest quarter of section 20; southeast quarter of southeast quarter of section 21; all of sections 22, 23, 24, 25, and 26; north half of northeast quarter, southeast quarter of northeast quarter, north half of northwest quarter, and southeast quarter of section 27; east half of southeast quarter of section 28; east half of southeast quarter of section 31; southeast quarter of northwest quarter of north half of northwest quarter, west half of southwest quarter and southeast quarter of section 32; east half of northeast quarter and south half of section 33; all of section 34; all of fractional sections 35 and 36, containing twelve thousand one hundred and thirty-three and twenty-five hundredths acres.

In township eleven south of range thirty east:

West half of section one; all of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; southwest quarter of southeast quarter and west half of section 12; all of sections 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30; north half of southeast quarter, southeast quarter of southwest quarter, southwest quarter and north half of section 31; all of sections 32, 33, 34, 35, and 36, containing twenty-two thousand three hundred and ninety-five and fifty-two hundredths acres.

31 In township twelve south of range thirty east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and thirty-five and fifty-two hundredths acres.

In township thirteen south of range thirty east:

All — sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; northwest —, southwest quarter of southwest quarter, east half of southwest quarter, and east half of section 18; all of sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; east half of southeast quarter, southwest quarter, and north half of section 30; northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, and south half of section 31; all of sections 32, 33, 34, and 35; southwest quarter of southeast quarter, southwest quarter, and north half of section 36, containing twenty-one thousand four hundred and sixty and twenty-six hundredths acres.

In township fourteen south of range thirty east:

All of sections 1, 2, 3, 4, 5, 6, 7, and 8; east half of southeast quarter, southwest quarter, southwest quarter of southeast quarter, and north half of section 9; all of sections 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19; southwest quarter of southwest quarter, east half of southwest quarter, southeast quarter, and north half of section 20; all of sections 21, 22, and 23; southeast quarter of southeast quarter, west half of southeast quarter, southwest quarter, and north half of section 24; all of sections 25, 26, 27, 28, 29, 30, and 31; west half of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter, and east half of section 32; all of sections 33,

34, 35, and 36, containing twenty-three thousand two hundred and thirty-two acres.

32 In township fifteen south of range thirty east:

All of sections 2, 3, and 4; east half of northeast quarter, northwest quarter of northeast quarter, northwest quarter, west half of southwest quarter, and southeast quarter of section 5; northwest quarter of southwest quarter, southeast quarter of northwest quarter, and east half of section 7; east half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of section 8; all of sections 9, 10, 11, 12, 13, 14, and 15; northeast quarter and north half of north*half* quarter of section 17; northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter of southeast quarter, and northeast quarter of southwest quarter of section 18; lot 4 of section 20; east half of northeast quarter and west half of southwest quarter of section 21; all of section 22; east half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of section 23; all of sections 24 and 25; southwest quarter of northeast quarter, lots 1, 2, and 7 of section 26; west half of northeast quarter, east half of southwest quarter, northwest quarter of southwest quarter, northwest quarter, and southeast quarter of section 27; east half of northeast quarter, northwest quarter of northwest quarter, north half of southeast quarter, and lot 1 of section 28; lots 1, 2, and 5 of section 29; northwest quarter of northwest quarter, lots 2, 3, and 4 of section 31; lots 1, 2, and 3 of section 32; lots 2 and 3 of section 33; all of fractional sections 35 and 36, containing fourteen thousand four hundred and fifty-two and fifty hundredths acres.

In township sixteen of range 30 east.

33 All of fractional section 1; lot 3 of section 4; lot 1 of section 9; all of fractional sections 10, 11, and 12; south half of northeast quarter, east half of southeast quarter, northwest quarter of southeast quarter, and west half of section 13; east half of northeast quarter of section 14; lots 1, 2, 3, 4, and west half of southeast quarter of section 15; lot 1 of section 22; southeast quarter of northeast quarter, and southeast quarter of section 23; all of section 24; northeast quarter of southeast quarter, west half of southeast quarter, southwest quarter and north half of section 25; east half of northeast quarter, northwest quarter of northeast quarter of northwest quarter, and east half of southeast quarter of section 26; lot 12 of section 28; northeast quarter of northeast quarter of section 33; east half or northeast quarter of section 34; all of sections 35 and 36, containing four thousand nine hundred and fifty-three and seven-hundredths acres.

In township seventeen south of range thirty east:

All of sections 1 and 2; east half of northeast quarter and east half of southeast quarter of section 3; southwest quarter of southeast quarter and west half of section 11; east half of northwest quarter of section 12; northeast quarter of northwest quarter of section 14; northeast quarter of northeast quarter of section 24, containing two thousand forty-one and sixty-two hundredths acres.

In township eighteenth south of range thirty east:

All of section 7; lot 3; southwest quarter of southeast quarter and south half of southwest quarter of section 8; southwest quarter of southeast quarter of section 13; west half of northeast quarter, west half of southeast quarter, and west half of section 17; all of sections 18 and 19; west half of northeast quarter, west half of southeast
34 quarter, and west half of section 20; northeast quarter of southeast quarter of section 25; west half of northeast quarter and west half of section 29; all of section 30 west of river; east half of northeast quarter, southwest quarter of northeast quarter, south half of lot 1; lot 2, east half of southwest quarter, and southeast quarter of section 31; northwest quarter and northwest quarter of southwest quarter of section 32, containing four thousand one hundred and seventy-nine and ninety-seven hundredths acres.

In township nineteen south of range thirty east:

Lots 1, 2, and north half of southwest quarter of section 2; southwest quarter of southeast quarter of section 3; south half of northeast quarter; lots 3 and 4 of section 7; southeast *corner* of northeast quarter, west half of northeast quarter, and lots 1 and 2 of section 10; all of fractional section 11; lots 1 and 2 of section 15; northwest quarter and lots 2 and 3 of section 17; northeast quarter of section 19; lots 2 and 3 of section 20, containing four thousand five hundred and forty-four and ninety-one hundredths acres.

In township twenty south of range thirty east:

All of fractional section 4; east half of northeast quarter, southwest quarter of northeast quarter, north half of southeast quarter, and southeast quarter of southwest quarter of section 8; lots 1 and 4 of section 9; all of fractional sections 11; lots 1, 2, and 3 of section 12; northeast quarter of northwest quarter, and west half of southeast quarter of section 14; northwest quarter of northeast quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section 15; southeast quarter of northeast quarter, northeast quarter of southeast quarter, and south-
35 east quarter of southwest quarter of section 17; southwest quarter of southeast quarter, and west half of southwest quarter of section 18; southwest quarter of northwest quarter of section 23, containing eleven hundred and sixty-three and forty-nine hundredths acres.

In township twenty-one south of range thirty east:

Southwest quarter of northwest quarter, southeast quarter of southeast quarter, and southeast quarter of southwest quarter of section 6; northeast quarter of northwest quarter of section 7; lot 1 of section 8; southwest quarter of southwest quarter of section 19; south half of southeast quarter of section 21; east half of southeast quarter, southwest quarter of southeast quarter, and south half of southwest quarter of section 22; south half of southeast quarter and south half of southwest quarter of section 23; east half of northwest quarter, northwest quarter of northwest quarter, east half of southwest quarter, and southwest quarter of southwest quarter of section 24; southeast quarter of southeast quarter and south half of southwest quarter of section 25; northeast quarter of northeast quarter, northeast

quarter of northwest quarter, and west half of northwest quarter of section 26; northeast quarter, north half of northwest quarter, northwest quarter of southeast quarter, and northeast quarter of southwest quarter of section 27; northeast quarter, northeast quarter of northwest quarter, and northwest quarter of southwest quarter of section 28; north half of southeast quarter and southeast quarter of southwest quarter of section 29; east half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of northwest quarter, and southeast quarter of section 31; west half of northwest quarter, northeast quarter of southeast quarter, and northwest quarter of southwest quarter of section 32; west half of southeast quarter
36 and southwest quarter of section 33; southeast quarter of southwest quarter of section 34; northeast quarter of northeast quarter of section 35; northwest quarter of northeast quarter, northwest quarter, southwest quarter of southeast quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section 36, containing three thousand and seventy-four and fourteen-hundredths acres.

In township twelve south of range thirty-one east:

West half of northwest quarter and west half of southwest quarter of section 1; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter and south half of section 2; east half of northeast quarter of section 3; northeast quarter of northeast quarter, west half of northeast quarter, southeast quarter and west half of section 5; all of sections 6, 7, and 8; west half of northwest quarter and southwest quarter of section 9; all of section 11; southwest quarter of southeast quarter, northwest quarter — southwest quarter, east half of southwest quarter, and northwest quarter of section 12; east half of southeast quarter, lots 1, 3, and 4 of section 13; northeast quarter and east half of northwest quarter of section 14; all of sections 17, 18, 19, 20, and 21; southeast quarter of southwest quarter and west half of southwest quarter of section 22; all of fractional section of 24; west half of southeast quarter, southeast quarter of southeast quarter, and west half of section 27; all of sections 28, 29, and 30; west half of southwest quarter, northeast quarter of southwest quarter, southeast quarter and north half of section 31; all of sections 32, 33, and 34, containing thirteen thousand one hundred and ninety-nine and forty-five hundredths acres.

In township thirteen south of range thirty-one east:

37 Southwest quarter of southwest quarter of section 2; all of section 3; southeast quarter of southeast quarter, west half of southeast quarter, southwest quarter, and north half of section 4; all of sections 5 and 6; west half of northwest quarter, northeast quarter of northwest quarter, west half of northwest quarter, southeast quarter, and south half of southwest quarter of section 7; east half of northeast quarter of northwest quarter of northeast quarter, north half of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and south half of southwest quarter of section 8; northeast quarter of northeast quarter, west half of northeast quarter, northeast quarter of northwest quarter, west half northwest quarter, west half of southeast quarter, and south half of

southwest quarter of section 9; east half of northeast quarter, northwest quarter, east half of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, northeast quarter of southwest quarter, and west half of southwest quarter of section 10; northwest quarter and west half of southwest quarter of section 11; west half of section 14; west half of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and east half of section 15; northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, east half of southeast quarter, and southwest quarter of section 17; east half of northwest quarter, northeast quarter, and south half of section 18; all of section 19; east half of northeast quarter, southeast quarter, and west half of section 20; all of section 21; east half of northwest quarter, northeast quarter of southwest quarter, and east half of section 22; west half of southeast quarter, southeast quarter of southeast quarter, and west half of section 23; west half of northwest quarter,
38 southeast quarter of northwest quarter, west half of southeast quarter, southeast quarter of southeast quarter, and southwest quarter of section 25; all of section 26; east half of northwest quarter, southwest quarter of northwest quarter, northeast quarter, and south half of section 27; south half of southeast quarter, southwest quarter, and north half of section 28; east half of northeast quarter, northwest quarter of northeast quarter, southeast quarter of southwest quarter, and west half of northwest quarter of section 29; all of sections 30 and 31; east half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, and south half of section 32; southeast quarter of southeast quarter, west half of southeast quarter, southwest quarter, and north half of section 33; all of sections 34, 35, and 36, containing fifteen thousand four hundred and fifty-two and thirty-two hundredths acres.

In township fourteen south of range thirty-one east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, and 9; east half of northeast quarter, southeast quarter, and west half of section 10; all of section 11; all of fractional section 12; lots 1, 2; east half of northwest quarter and south half of section 13; all of sections 14, 15, 17, and 18; east half of northwest quarter, northwest quarter of northwest quarter, southwest quarter, and east half of section 19; east half of northeast quarter, northwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, west half southwest quarter, and east half of southeast quarter of section 20; all of sections 21 and 22; west half of southeast quarter and west half of section 23; north half of southwest quarter of section 24; south half of northeast quarter, west half of southeast
39 quarter, north half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section 25; west half of northeast quarter, southeast quarter of northeast quarter, northwest quarter and east half of southeast quarter of section 26; west half of northwest quarter, west half of southeast quarter, and southwest quarter of section 27; all of section 28; northeast quarter of

northeast quarter, northwest quarter of northwest quarter, southeast quarter, and southwest quarter of southwest quarter of section 29; northeast quarter of northeast quarter, southwest quarter of southeast quarter, and west half of section 30; northeast quarter of northeast quarter, northwest quarter, and south half of section 31; west half of northwest quarter, southwest quarter, and east half of section 32; all of sections 33 and 34; west half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of section 35; west half of northeast quarter, west half of southeast quarter, southeast quarter of southeast quarter, and southwest quarter of section 36, containing nineteen thousand three hundred and fifty-seven and fifty-nine hundredths acres.

In township fifteen south of range thirty-one east:

West half, and west half of southeast quarter of section 1; east half of southeast quarter, northwest quarter of southeast quarter, southwest quarter, and north half of section 2; west half of southeast quarter, southeast quarter of southeast quarter, and north half of section 3; all of section 4; east half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and east half of section 5; all of sections 6 and 7; east half of southeast
40 quarter; northwest quarter of southeast quarter, southwest quarter, and north half of section 8; east half of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, southwest quarter, and northeast quarter of section 9; all of sections 10, 11, 12, 13, 14, 15, 17, 18, and 19; northeast quarter of northwest quarter, west half of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, southwest quarter, and northeast quarter of section 20; all of sections 21, 22, and 23; east half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and east half of section 24; all of sections 25, 26, 27, 28, and 29; east half of southeast quarter, northwest quarter of southeast quarter, southwest quarter, and north half of section 30; all of sections 31, 32, 33, 34, and 35; east half of southeast quarter, northwest quarter of southeast quarter, southwest quarter, and north half of section 36, containing twenty-one thousand six hundred and sixty-eight and forty-six hundredths acres.

In township sixteen south of range thirty-one east:

All of section one; southeast quarter of northwest quarter, northwest quarter of northwest quarter, southwest quarter, and east half of section 2; all of section 3; northeast quarter of northwest quarter, west half of northwest quarter, southwest quarter, and east half of section 4; all of section 5; east half of northeast quarter, northwest quarter of northeast quarter, northeast quarter of northwest quarter, southeast quarter of southwest quarter, and southeast quarter of section 6; east half of northeast quarter, northwest quarter of northeast quarter, northeast quarter of northwest quarter, and south half of section 7; all of sections 8, 9, and 10; east half of
41 southwest quarter, northwest quarter of southwest quarter, southeast quarter and north half of section 11; northeast quarter of northeast quarter, west half of northeast quarter, north-

west quarter and south half of section 12; all of sections 13, 14, 15, 17, 18, 19, and 20; northeast quarter of southwest quarter, southeast quarter, and north half of section 21; all of sections 22 and 23; east half of southwest quarter, southwest quarter of southwest quarter, southeast quarter, and north half of section 24; all of sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand seven hundred and sixty-one and fifty-two hundredths acres.

In township seventeen south of range thirty-one east:

All of sections 1, 2, 3, 4, 5, and 6; east half of northeast quarter and west half of northwest quarter of section 7; all of sections 8, 9, 10, 11, 12, 13, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; northeast quarter and east half of northwest quarter of section 32; north half of section 33; all of sections 34, 35, and 36, containing eighteen thousand six hundred and fifty-six and ninety-three hundredths acres.

In township eighteen south of range thirty-one east:

All of section 1; lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and south half of lot 11 of section 2; lots 1, 2, 7, and 8 of section 8; east half of northeast quarter of section 9; northwest quarter of section 10; east half of northeast quarter of section 11; all of section 12; north half and southeast quarter of section 13; southeast quarter of southeast quarter, southeast quarter of southwest quarter, and west half of northeast quarter of section 14; southeast quarter of northeast quarter, east half of northwest quarter, northeast quarter of southeast quarter, and west half of southeast quarter of section 15; northwest quarter of northeast quarter and north
42 half of northwest quarter of section 22; northeast quarter of northeast quarter, southwest quarter of northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and east half of southwest quarter of section 23; northeast quarter and east half of southeast quarter of section 24; northwest quarter of northwest quarter of section 25; northeast quarter of northeast quarter, east half of northwest quarter, and north half of southwest quarter of section 26; southwest quarter of northwest quarter, west half of southeast quarter, and east half of southwest quarter of section 28; southeast quarter of northeast quarter of section 33; northeast quarter of northeast quarter, west half of southeast quarter, southeast quarter of southeast quarter, and north half of southwest quarter of section 34; southwest quarter of northwest quarter of section 35, containing five thousand four hundred and eleven acres.

In township nineteen south of range thirty-one east:

West half of northwest quarter of section 1; east half of northeast quarter and southeast quarter of southwest quarter of section 2; southwest quarter of southwest quarter of section 3; southeast quarter of northeast quarter and northeast quarter of southeast quarter, section 4; southwest quarter of northwest quarter and southwest quarter of section 13; east half of southeast quarter of section 14; north half of southwest quarter, southeast quarter and northwest quarter of section 24, containing one thousand and forty and fifty-five hundredths acres.

In township twenty-one south of range thirty-one east:

East half of northeast quarter of section 1; east half of southeast quarter, southwest quarter of southeast quarter of southwest quarter and northwest quarter of southwest quarter of southwest quarter
43 of section 12; lots 2 and 3 of section 17; northeast quarter of northeast quarter, south half of northwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section 19; northeast quarter of northeast quarter, west half of northeast quarter and west half of section 20; northwest quarter of northeast quarter and south half of northeast quarter of section 21; southwest quarter of northwest quarter and north half of southwest quarter of section 22; southwest quarter of northwest quarter, east half of southwest quarter and east half of section 23; all of section 24; northeast quarter of southeast quarter, west half of southeast quarter, east half of southwest quarter and north half of section 25; northeast quarter, east half of northwest quarter, northwest quarter or northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter section 26; northeast quarter of northeast quarter and southeast quarter of southeast quarter of section 27; southeast quarter of northeast quarter, southwest quarter of northwest quarter and northeast quarter of southeast quarter of section 28; northeast quarter of northwest quarter, west half of northwest quarter and west half of southwest quarter of section 29; southeast quarter of southwest quarter and east half of section 30; southeast quarter of southwest quarter of section 31; east half of northeast quarter, northeast quarter of southeast quarter and southwest quarter of southeast quarter of section 32; southwest quarter of northwest quarter and northwest quarter of southwest quarter of section 33; east half of section 34, west half of northwest quarter and south half of section 35, containing five thousand one hundred and twenty-two and twenty-seven hundredths acres.

In township twelve south of range thirty-two east:

44 Southwest quarter of northwest quarter, southeast quarter of southwest quarter and lot 3 of section 19; lots 2, 3, 4, and 5 of section 30, containing four hundred and thirteen and forty-two hundredths acres.

In township thirteen south of range thirty-two east:

East half of southwest quarter and northwest quarter of southwest quarter of section 31, containing one hundred and twenty acres.

In township fourteen south of range thirty-two east:

Lots 1, 2, and 5 of section 6; lots 3, 4, 5, and 6 of section 7; northeast quarter of southeast quarter, northwest quarter of southwest quarter and northwest quarter of section 19; southwest — of northwest quarter and southwest quarter of southeast quarter of section 20; northwest quarter of southwest quarter of section 29; west half of northeast quarter, east half of northwest quarter, west half of southeast quarter and southwest quarter of section 30; east half of southeast quarter, southwest quarter of southeast quarter, northwest quarter of southwest quarter and northwest quarter of section 31; west half of southeast quarter, southeast quarter of southeast quarter,

south half of northwest quarter and southwest quarter of section 32; southwest quarter of southwest quarter of section 33, containing one thousand and nine hundred and twenty-eight and fifty-four hundredths acres.

In township fifteen south of range thirty-two east:

Southwest quarter of northwest quarter and west half of southwest quarter of section 2; all of sections 3 and 4; east half of southwest quarter of section 5; southwest quarter of northeast quarter, northwest quarter and south half of section 7; north half and southwest quarter of section 8; west half of northwest quarter, southeast quarter of northwest quarter, southwest quarter and east half of section 9; all of section 10; west half of lot 3 of section 11; west half and lots 2 and 3 of section 14; all of sections 15, 17, 18, 19, 20, 21, and 22; all of fractional sections 23 and 26; all of sections 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing sixteen thousand four hundred and eighty-one and seven-hundredths acres.

In township sixteen south of range thirty-two east:

All of sections 1, 2, 3, 4, 5, 6, and 7; east half of southeast quarter, northwest quarter of southeast quarter, east half of southwest quarter, southwest quarter of southwest quarter, and north half of section 8; all of sections 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, and 20; east half of northeast quarter, northwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, and east half of southeast quarter of section 21; west half of northeast quarter, and west half of section 22; northeast quarter of northwest quarter of section 23; northwest quarter of northeast quarter, and northwest quarter of section 24; northeast quarter of northwest quarter, northwest — of northwest quarter, west half of southeast quarter, and southwest quarter of section 27; northeast quarter of northeast quarter, northwest quarter of northwest quarter, southwest quarter of northwest quarter, and south half of section 28; all of sections 29, 30, and 31; northeast quarter of southwest quarter, west half of southwest quarter, southeast quarter, and north half of section 32; northeast quarter of southeast quarter, west half of southeast quarter, east half of southwest quarter, northwest quarter of southwest quarter, and north half of section 33; east half of southwest quarter, northwest quarter of southwest quarter, southeast quarter, and north half of section 34; south half of southeast quarter of section 35, and southwest quarter of southwest quarter of section 36, containing seventeen thousand six hundred and four and forty-two hundredths acres.

In township seventeen south of range thirty-two east:

West half of northwest quarter, and southwest quarter of section 1; east half of northeast quarter, and south half of section 2; all of sections 3, 4, 5, 6, 7, 8, 9, 10, and 11; west half of northeast quarter, northwest quarter and south half of section 12; all of sections 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand six hundred and eighty-three and sixty-hundredths acres.

In township eighteen south of range thirty-two east:

Lots 3, 10, 11, 12, and south half of lots 13 and 14 of section 1; all of section 2; lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14 of section 3; all of sections 4, 5, 6, 7, 8, and 9; lot one, west half and northeast quarter of section 10; all of fractional sections 11 and 12; west half of northeast quarter, west half of southeast quarter, lots 1, 2, and 3 of section 13; all of fractional section 14; west half of section 15; west half of southwest quarter, southeast quarter of southwest quarter, southeast quarter and north half of section 17; all of sections 18, 19, 20, 21, and 22, lot 1, west half of southeast quarter, northeast quarter of southeast quarter, east half of northwest quarter, northeast quarter and southwest quarter of section 23; all of section 24; east half of southeast quarter, southwest quarter of southeast quarter, west half of southwest quarter, southeast quarter of southwest quarter, and north half of section 25; west half of northeast quarter, northwest quarter and south half of section
47 26; all of sections 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand six hundred and thirty-three and forty-eight hundredths acres.

In township nineteen south of range thirty-two east:

All of sections 1, 2, 3, and 4; east half of southeast quarter, southwest quarter and north half of section 5; north half of southwest quarter, southeast quarter and north half of section 6; east half of southeast quarter, northwest quarter of southeast quarter, and northeast quarter of section 7; east half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of northwest quarter, east half of southeast quarter, northwest quarter of southeast quarter, and northwest quarter of southwest quarter of section 8; all of section 9; southwest quarter of southeast quarter, east half of southeast quarter, southwest quarter and north half of section 10; all of sections 11 and 12; east half section 13; west half and west half of northeast quarter of section 15; east half of northeast quarter, southeast quarter of southwest quarter, and southeast quarter of section 17; east half of northeast quarter and southeast quarter of southeast quarter of section 18; northeast quarter and south half of section 19; all of section 20; lot one and northwest quarter of section 21; northwest quarter of southeast quarter and northeast quarter of southwest quarter of section 22; lots 1, 2, 3, 7, and east half of northeast quarter of section 23; all of fractional section 24 north of river; lots 2, 5, and 6, south half of lots 3 and 4, and south half of section 25; south half of lot 1, west half of northeast quarter, southeast quarter and west half of section 26; east half of northeast quarter, and south half of section 27; east half of northeast quarter, west
48 half of northwest quarter and lot two of section 28; northwest quarter of northeast quarter, south half of northeast quarter, west half of southeast quarter, and west half of section 29; lots 1, 2, and north half of section 30; northeast quarter and northwest quarter of southeast quarter of section 33; all of sections 34, 35, and 36, containing fifteen thousand five hundred and eight and seventy-five hundredths acres.

In township twenty south of range thirty-two east:

All of sections 1, 2, 3, 4, and 5; east half of section 6; northeast quarter, north half of southeast quarter, southwest quarter of southeast quarter and west half of section 7; northeast quarter of northeast quarter, west half of northeast quarter, and west half of section 8; north half of northwest quarter of section 9; all of section 10; north half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section 11; all of fractional sections 12 and 13; lots 1, 2, and 3, southwest quarter of northeast quarter, west half of southeast quarter, northwest quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section 14; northeast quarter, east half of northwest quarter, northeast quarter of southeast quarter, and southeast quarter of southwest — of section 15; west half of section 17; all of section 18; east half of section 19; northwest quarter and west half of southwest quarter of section 20; west half of southeast quarter, and southeast quarter of southeast quarter of section 22; lot 2, northwest quarter of northeast quarter, east half of northwest quarter, and west half of southwest quarter of section 23; lot 1, west half of northeast quarter, and south half of section 25; west half and southeast quarter of section 26; northeast quarter of section 27; east half of southwest quarter, and northwest quarter of
49 southwest quarter of section 28; west half of southwest quarter of section 29; east half of section 30; east half of section 31; west half of northwest quarter of section 32; east half of northeast quarter, and east half of southeast quarter of section 34; east half, southwest quarter of northwest quarter, and west half of southwest quarter of section 35; all of section 36, containing twelve thousand four hundred and seven and sixty-four hundredths acres.

In township twenty-one south of range thirty-two east:

All of section 1; east half, east half of northwest quarter, and east half of southwest quarter of section 2; west half of northwest quarter, south half of southeast quarter, and southwest quarter of section 5; all of section 6; north half of section 7; north half of section 8; northwest quarter of section 9; northeast quarter of section 10; north half of section 11; north half and southwest quarter of section 12; all of section 13; east half of southeast quarter, northwest quarter of southeast quarter, and southwest quarter of section 14; south half of section 15; all of sections 17, 18, 19, 20, 21, and 22; southeast quarter of northwest quarter, west half of northwest quarter, northeast quarter, and south half of section 23; all of sections 24, 25, and 26; north half of northeast quarter, southwest quarter of northeast quarter, west half, and southeast quarter of section 27; all of sections 28, 29, 30, 31, 32, 33, 34, and 35; west half of northeast quarter, south half of northwest quarter, and south half of section 36, containing seven[illegible]n thousand four hundred and eighty-six and fifty-six hundredths acres.

In township fifteen south of range thirty-three east:

Lot 3 of section 28; lots 4, 5, and 6 of section 31; lots 3 and 6 of section 33, containing four hundred and seventy-eight and ninety-four hundredths acres.

50 In township sixteen south of range thirty-three east:

Northeast quarter of southwest quarter of section 5; south half of southeast quarter and west half of section 6; north half of northeast quarter, southwest quarter of southeast quarter, and west half of section 7; northeast quarter of northeast quarter, northeast — of southwest quarter, and west half of northwest quarter of section 15; west half of southwest quarter of section 17; all of section 18; northwest quarter of northeast quarter of section 21; lots 2, 3, and east half of northwest quarter of section 22; east half of northwest quarter and northwest quarter of northwest quarter of section 29; northeast quarter of northeast quarter and southwest quarter of northeast quarter of section 30; south half of northeast quarter and south half of section 31; east half of northwest quarter and southwest quarter — northwest quarter and northeast — & south half of sec. 32; southwest quarter of northwest quarter and southwest quarter of section 33; southwest quarter of southwest quarter, lots 2, 4, and southeast quarter of section 35, containing three thousand seven hundred and five and sixty-three hundredths acres.

In township seventeen south of range thirty-three east:

Northeast quarter and lot 1 of section 2; west half of section 4; all of sections 5, 6, 7, and 8; west half of section 9; west half of northwest quarter and northwest quarter of southwest quarter of section 12; northwest quarter of southwest quarter and east half of northwest quarter of section 14; southwest quarter of northwest quarter, southwest quarter of southeast quarter, and southwest quarter of section 15; all of sections 17, 18, 19, 20, 21, and 22; west half of northwest quarter and southwest quarter of section 26; all of sections 27, 28, 29, and 30; east half of southwest quarter, southeast quarter, and north half of section 31; all of sections 32 and 33; east half of southeast quarter, northwest quarter of southeast
51 quarter, southwest quarter, and north half of section 34; west half of southeast quarter and west half of section 35, containing thirteen thousand three hundred and sixty-seven and sixty-two hundredths acres.

In township eighteen south of range thirty-three east:

Lots 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14 of section 1; all of sections 2 and 3; lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of section 4; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and south half of lot 3 of section 5; lot 6 and south half of lots 12 and 13 of section 6; all of sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 17; lots 1, 2, 4, 5, 6, 7, and 8 of section 18; all of sections 19, 20, 21, 22, 23, and 24, east half of northeast quarter, northwest quarter of northeast quarter, east half of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and southwest quarter of section 25; all of sections 26, 27, and 28; east half of southeast quarter, northwest quarter of southeast quarter, east half of southwest quarter, northwest quarter of southwest quarter, and north half of section 29; all of sections 30, 31, 32, 33, 34, 35, and 36, containing twenty-three thousand five hundred and eleven and eighteen-hundredths acres.

In township nineteen south of range thirty-three east:

North half of southeast quarter, northeast quarter of southwest quarter, west half of southwest quarter, and north half of section 1; northeast quarter of southwest quarter, southeast quarter, and north half of section 2; all of sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30; west half of southwest quarter of southeast quarter of southwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and north half of section 31; all of sections 32 and 33; east half of southeast quarter, southwest quarter of southeast quarter,
52 southwest quarter, and north half of section 34; all of sections 35 and 36, containing 21,026 and two-hundredths acres.

In township twenty south of range thirty-three east:

All of sections 1, 2, and 3; southeast quarter of southwest quarter, southeast quarter, and north half of section 4; all of fractional sections 5, 6, 8, and 9; north half of southeast quarter, southeast quarter of southeast quarter, southwest quarter, and north half of section 10; all of sections 11, 12, 13, 14, and 15; all of fractional section 17; all of sections 21, 22, and 23; lots 1, 2, 3, and north half of section 24; all of section 27; southwest quarter of section 28; south half — northwest quarter and south half of northeast quarter of section 29; all of fractional section 30; all of sections 31, 32, 33, 34, and 35; all of fractional section 36, containing fifteen thousand and eighty-six and seventy-eight hundredths acres.

In township twenty-one south of range thirty-three east:

All of fractional section one; all of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18; north half of southeast quarter, northeast quarter of southwest quarter, and west half of southwest quarter of section 19; all of sections 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; northeast quarter, east half of northwest quarter, northeast quarter of southeast quarter, west half of southeast quarter, and southwest quarter of section 30; west half of section 31; east half of northwest quarter, west half of southeast quarter, southeast quarter of southeast quarter, and east half of southwest quarter of section 32; east half, east half of northwest quarter, east half of southwest quarter, and southwest quarter of southwest quarter of section 33; all of sections 34 and 35; north half and west half of southwest quarter of section 36, containing twenty-one thousand and seventy-two and eighty-two hundredths acres.

53 In township twenty-two south of range thirty-three east:

All of sections one and two; west half of section three; east half of section 4; all of section 5; northwest quarter of northeast quarter, south half of northeast quarter, west half and southeast quarter of section six; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter and south half of section seven; north half, southeast —, north half of southwest quarter, and southwest quarter of southwest quarter of section 8; west half of section 9; north half of southeast quarter, northeast quarter of southwest quarter, and west half of southwest quarter of section 11; all of sections 12 and 13; northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and south half of

section 14; all of section 15; east half northwest quarter of northwest quarter, south half of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section 17; all of sections 18 and 19; northwest quarter of northeast quarter, south half of northeast quarter, west half and southeast quarter of section 20; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section 21; all of section 22; east half, east half of northwest quarter of northwest quarter, and southwest quarter of section 24; all of sections 25, 26, 27, 28, 29, 30, 31, 32, 33; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of section 34; all of sections 35 and 36, containing nineteen thousand five hundred and ninety-seven and sixty-eight hundredths acres.

In township seventeen south, of range thirty-four east:

54 Lot 6 of section 30; all of fractional section 31; lots 4 and 5 of section 32; lot 1 and west half of southwest quarter of section 33, containing four hundred and forty-four and forty-hundredths acres.

In township eighteen south of range thirty-four east:

Lot 5 and southwest quarter of southwest quarter of section 5; all of section 6; west half of southeast quarter, east half of northeast quarter, northwest quarter of northeast quarter, east half of northwest quarter, east half of southwest quarter, south hlaf of lot one, and north half of lot two, of section 7; west half of northwest quarter and southwest quarter of section eight; west half of northeast quarter, and lot one of section 11, lot two of section 13; west half of section 17; east half of northeast quarter, east half of southeast quarter, and lots 1 and 2 of section 18; east half of northeast quarter and west half of section 20; all of fractional section 26; lots 1, 2, and 3, and west half of section 29; lots 1, 2, 3, 5, east half of northeast quarter and northwest quarter of section 32; lot one and northeast quarter of northeast quarter of section 36, containing four thousand three hundred and fifty-three and fifty-one hundredths acres.

In township nineteen south of range thirty-four east:

All of fractional section 5; all of sections 6 and 7; lots 1, 2, 3, 4, west half of northwest quarter, and west half of southwest quarter of section 8; lots 1, 2, 3, 4, and west half of section 17; all of sections 18, 19, and 20; lots 1 and 2 of section 21; lots 1, 2, 3, and 4 of section 28; all of sections 29, 30, 31, and 32; lots 1, 2, 3, 4, and 5 of section 33, containing seven thousand nine hundred and forty-two and seventy-one hundredths acres.

In township twenty south of range thirty-four east:

55 Lots 1, 2, 3, 4, and southwest quarter of section four; all of sections 5, 6, 7, and 8; all of fractional sections 9 and 15; all of sections 17 and 18; all of fractional sections 19, 20, 21, and 33; lot one of section 34; lot 3; southwest quarter of southeast quarter and southwest quarter of southwest quarter of section 35; all of fractional section 36, containing five thousand nine hundred and ninety-eight and thirty-eight hundredths acres.

In township twenty-one south of range thirty-four east:

All of sections 1, 2, and 3; all of fractional sections 4, 5, and 6; all of sections 7, 8, and 9; north half and southwest quarter of section ten; all of sections 11, 12, and 13; north half of section 14; west half of southeast quarter, southeast quarter of southeast quarter, and west half section 15; all of sections 17, 18, 19, 20, 21, and 22; northeast quarter of northwest quarter, west half of northwest quarter, and northwest quarter of southwest quarter of section 23; east half of northwest quarter and northwest quarter of southeast quarter, east half of southwest quarter, northeast quarter and southwest quarter of southwest quarter of section 24; southwest quarter of northeast quarter, northwest quarter, and south half of section 25; southeast quarter of northeast quarter, southwest quarter of northwest quarter, and south half section 26; all of sections 27, 28, 29, and 30; west half of northeast quarter, southeast quarter of northeast quarter, northwest quarter and southwest quarter of section 31; all of sections 32, 33, 34, 35, and 36, containing twenty thousand six hundred and ninety-eight and forty-seven hundredths acres.

In township twenty-two south of range thirty-four east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10; all of fractional sections 11, 12, 14, 15, and 17, containing seven thousand six hundred and sixty-one and eighteen-hundredths acres.

56 In township twenty-three south of range thirty-four east:

All of fractional sections 1 and 2; all of sections 3, 4, and 5; all of fractional sections 6 and 7; all of sections 8, 9, 10, 11, 14, 15, and 17; all of fractional sections 18 and 19; all of sections 20, 21, 22, 27, 28, and 29; all of fractional sections 30, 31, 32, 33, and 34; all of fractional sections 35 and 36, containing fifteen thousand and twenty-six and eighty-seven hundredths acres.

In township twenty-four south of range thirty-four east:

All of sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, containing eleven thousand two hundred and three and sixteen-hundredths acres.

In township twenty-five south of range thirty-four east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand one hundred and fifty-five and twenty-hundredths acres.

In township twenty-six south of range thirty-four east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand two hundred and eighty-one and fifty-hundredths acres.

In township twenty-seven south of range thirty-four east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand eight hundred and ninety-one and forty-one hundredths acres.

In township twenty-eight south of range thirty-four east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18,

19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and twenty
57 and seventy-six hundredths acres.

In township eighteen south of range thirty-five east:

All of fractional sections 19 and 29; southwest quarter of southwest quarter and lots 1 and 2 of section 30; west half of northwest quarter, west half of southwest quarter, and northeast quarter of northeast quarter of section 31; lots 1 and 2 of section 32, containing four hundred and thirty-one and forty-hundredths acres.

In township nineteen south of range thirty-five east:

West half of southwest quarter of section five; east half of southwest quarter, southeast quarter, northwest quarter, west half of northeast quarter, and southeast quarter of northeast quarter of section 6; northeast quarter of section 7; northeast quarter of northeast quarter, west half of northwest quarter, and southwest quarter of section 8; lot one of section 9; all of fractional sections 17 and 19, northeast quarter of northwest quarter, and lot two of section 21; all of fractional section 26, lots 1 and 2 of section 27; lot 3 of section 28; all of fractional sections 29, 30, 31, and 32; lots 1 and 3 of section 33, containing two thousand six hundred and forty-one and forty-one hundredths acres.

In township twenty south of range thirty-five east:

Southwest quarter of northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, southeast quarter of southwest quarter, and west half of southwest quarter of section 2; northeast quarter, east half of northwest quarter, and fractional south half of section 3; all of fractional sections 4, 5, 6, 7, 8, and 10; south half of northeast quarter, northwest quarter of northeast quarter, northwest quarter, and south half of section 11; southwest quarter of southwest quarter, east half of southwest quarter, and
58 lots 1 and 2 of section 12; all of fractional sections 13, 14, 17, and 24; southwest quarter, west half of southeast quarter, and lot 3 of section 32, and all of fractional section 33, containing four thousand four hundred and sixty-three and eighty-two hundredths acres.

In township twenty-one south of range thirty-five east:

All of fractional sections one and two; west half of southwest quarter and southeast quarter of southwest quarter of section five; west half of northeast quarter, west half of southeast quarter, and west half of section six; west half of northeast quarter and west half of section 7; northeast quarter of northwest quarter of section eight; all of fractional section eleven; all of section twelve; west half of southeast quarter, southwest quarter, and north half of section thirteen; all of fractional section fourteen; west half of northeast quarter, west half of southeast quarter, east half of southwest quarter, northwest quarter of southwest quarter, and northwest quarter of section eighteen; west half of northeast quarter, southeast quarter of northeast quarter, east half northwest quarter, south west quarter of northwest quarter, east half of southwest quarter, northwest quarter of southwest quarter, and southeast quarter of section nineteen; all of fractional section twenty-three; all of sections twenty-four and

twenty-five; all of fractional section twenty-six; northwest quarter of northwest quarter and south half of southwest quarter of section twenty-nine; east half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, and northeast quarter of southeast quarter of section 30; west half of northeast quarter, northwest quarter of northwest quarter of northwest quarter, south half of northwest quarter, and southeast quarter
59 of southwest quarter of section 32; east half of northwest quarter and east half of southeast quarter of section 33; all of fractional sections 35 and 36, containing six thousand eight hundred and sixty-four and sixty-five hundredths acres.

In township twenty-two south of range thirty-five east:

All of fractional section 1; south half of lot two of section 3; east half of northeast quarter, lots 1 and 4 of section 4; lots 1 and 2, southwest quarter of northwest quarter and southwest quarter of section 5; southeast quarter of northeast quarter, west half of northwest quarter, and southeast quarter of section six; lots 2 and 4 of section 7; all of fractional section 8, containing one thousand two hundred and seven and forty-five hundredths acres.

In township twenty-three south of range thirty-five east:

All of fractional sections 22, 23, and 24; all of sections 25 and 26; all of fractional sections 27, 28, 29, 30, and 31; all of sections 32, 33, 34, 35, and 36, containing six thousand nine hundred and sixty-six and sixty-two hundredths acres.

In township twenty-four south of range thirty-five east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, containing nineteen thousand seven hundred and ninety-three and fifty-four hundredths acres.

In township twenty-five south of range thirty-five east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, containing fourteen thousand two hundred and fifty seven and forty-seven hundredths acres.

In township twenty-six south of range thirty-five east:

All of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, containing eleven thousand two hundred and thirteen and sixty-three hundredths acres.

In township twenty-seven south of range thirty-five east:
60 All of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, containing fifteen thousand six hundred and sixty and seventy-four hundredths acres.

In township nineteen south of range thirty-six east:

West half of southwest quarter of section 19; west half of northwest quarter, southwest quarter of southeast quarter, southeast quarter of northwest quarter and southwest quarter of northwest quarter, southwest quarter of southeast quarter, and southwest quarter of section 32, containing one thousand two hundred and eighty and eighty-eight hundredths acres.

In township twenty-five south of range thirty-six east:

Southwest quarter of northeast quarter, west half of southeast quarter, and west half of section 4; all of sections 5, 6, 7, 8, and 9;

west half of southeast quarter and west half of section 15; all of sections, 17, 18, 19, 20, 21, and 22; southeast quarter of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southeast quarter, and southwest quarter of section 26; all of sections 27, 28, and 29; west half of southeast quarter, northeast quarter, and west half of section 30; northwest quarter of northeast quarter, northwest quarter of southwest quarter, and northwest quarter of section 31; all of sections 32, 33, and 34; southwest quarter and southeast quarter and west half of section 35, containing thirteen thousand one hundred and forty-four and twenty-nine hundredths acres.

In township twenty-six south of range thirty-six east:

West half of northeast quarter, southeast quarter of southeast quarter, west half of southeast quarter, and west half of southwest quarter of section 2; all of sections, 3, 4, 5, 6, 7, 8, 9, and 10;
61 west half of northwest quarter of section 11; west half of northwest quarter and southwest quarter of section 12; west half of section 13; northeast quarter of southeast quarter, west half of northwest quarter, and west half of southwest quarter of section 14; all of sections 15, 17, 18, 19, 20, 21, and 22; west half of northwest quarter, northeast quarter of southeast quarter, and west half of southwest quarter of section 23; west half of southeast quarter and west half of section 24; all of section 25; southeast quarter of southwest quarter of section 26; all of sections 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing eighteen thousand four hundred and eighty-two and eight-hundredths acres.

In township twenty-eight south of range thirty-six east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand seven hundred and fifty-four acres.

In township twenty-nine south of range thirty-six east:

All of sections 1, 2, 3, 4, and 12, containing three thousand two hundred and seven and twenty-hundredths acres.

In township twenty-eight south of range thirty-seven east:

West half of section 4; all of sections 5, 6, 7, and 8; northwest quarter of northeast quarter, southeast quarter, and west half of section 9; southeast quarter of southeast quarter of section 14; southeast quarter of northeast quarter, northwest quarter of southeast quarter, and south half of southwest quarter of section 15; all of sections 17, 18, 19, 20, and 21; west half of section 22; northwest quarter of northeast quarter and west half of section 27; all of sections 28, 29, 30, 31, 32, 33, 34, and 35; northwest quarter of northwest quarter of section 36, containing twelve thousand
62 five hundred and ninety-one and eighty-hundredths acres.

In township twenty-nine south of range thirty-seven east:

West half of section one; all of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand and thirty-two and fifteen-hundredths acres.

In township thirty south of range thirty-seven east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, and 9; west half of northeast

quarter, west half and west half of southeast quarter of section 10; northeast quarter of northwest quarter, west half of northwest quarter, and east half of southwest quarter of section 11; southeast quarter of northwest quarter, west half of northwest quarter, southeast quarter of southeast quarter, and northwest quarter of southeast quarter of section 12; all of sections 13, 14, 15, 17, 18, 19, 20, 21, 22, and 23; all of fractional sections 24, 25, and 26; all of sections 27, 28, 29, 30, 31, 32, 33, 34; all of fractional sections 35 and 36, containing nineteen thousand nine hundred and fourteen and six-hundredths acres.

In township thirty-three south of range thirty-seven east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand three hundred and seventy-six and fifty-two hundredths acres.

In township twenty-eight south of range thirty-eight east:

South half of southwest quarter of section 31, containing 80 acres.

In township twenty-nine south of range thirty-eight east:

West half of northeast quarter, west half southeast quarter of southeast quarter, and west half of southeast quarter of section
63 6; all of section 7; west half of southwest quarter of section 8; west half of section 17; all of sections 18, 19, and 20; west half of southwest quarter of section 21; west half of northwest quarter and west half of southwest quarter of section 28; all of sections 29, 30, 31, and 32; west half of section 33, containing six thousand six hundred and twenty-six and thirty-two hundredths acres.

In township thirty south of range thirty-eight east:

Lots 2 and 3 of section 3; all of sections 4, 5, 6, and 7; all of fractional sections 8 and 9; lots 1, 2, and 3 of section 11; lots 1, 2, 3 and east half of southwest quarter of section 14; northwest quarter of northwest quarter and lots 2 and 3 of section 15; all of fractional sections 17, 18, 19, and 22; lots 3, 4, and 5 of section 23; lots 2, 3, 5, and 7 of section 25, containing five thousand five hundred and seventy-nine and fifty-hundredths acres.

In township thirty-one south of range thirty-eight east:

All of fractional sections 1, 6, 7, 8, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22; all of sections 23, 24, 34, 35, and 36, containing nine thousand six hundred and thirteen and twenty-six hundredths acres.

In township thirty-two south of range thirty-eight east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, and 20; north half and southwest quarter of section 21; east half east half of northwest quarter, southwest quarter of northwest quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section 22; all of sections 23, 24, 25, and 26; east half east half of northwest quarter, northwest quarter of northwest quarter, and east half of southwest quarter of section 27; west half and west half of southeast quarter of section 28; all of sections 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand
64 eight hundred and four and eighty-five hundredths acres.

In township thirty-three south of range thirty-eight east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18,

19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and thirty and eighty-four hundredths acres.

In township thirty-two south of range thirty-nine east:

Lot one of fractional section 2 west of river; lots 1, 2, and 3 of section 3; east half of northwest quarter of section 4; all of sections 5, 6, 7, and 8; lots 2, 3, and 4 of section 11; lot 3 of section 12; lots 1 and 2 of section 13; lots 1 and 2 of section 14; all of sections 17, 18, 19, 20, and 21; east half of southwest quarter and lots 1, 2, and 3 of section 24; lots, 1, 2, 3, and 4 of section 25; west half of northwest quarter and south half of section 27; all of sections 28, 29, 30, 31, 32, 33, and 34; south half of northeast quarter, southeast quarter and west half of section 35; east half of northeast quarter, southwest quarter of northeast quarter, southeast quarter of northwest quarter and south half of section 36, containing twelve thousand five hundred and one and eighty-eight hundredths acres.

In township thirty-three south of range thirty-nine east:

North half and southwest quarter of section 1; all of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; northwest quarter of section 12; northeast quarter of northeast quarter, west half of northeast quarter, southeast quarter and west half of section 13; all of sections 14, 15, 17, 18, 19, 20, 21, 22, and 23; southeast quarter of northeast quarter, west half of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, west half of southwest quarter and northeast quarter of southeast quarter of section
65 24; west half of southeast quarter and west half of section 25; all of sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand two hundred and twenty and seventy-six hundredths acres.

In township thirty-four south of range thirty-nine east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and fifteen and twenty-six hundredths acres.

In township thirty-five south of range thirty-nine east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand four hundred and ninety-three and sixty-eight hundredths acres.

In township thirty-six south of range thirty-nine east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-one thousand nine hundred and twenty-one and ninety-three hundredths acres.

In township thirty-seven south of range thirty-nine east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, containing twenty-two thousand five hundred and thirteen and ninety-seven hundredths acres.

In township thirty-four south of range forty east:

Lots 1, 2, 3 and southwest quarter of southwest *section* of section

5; all of sections 6 and 7; lot 1, west half of northwest quarter, east half of southeast quarter and southwest quarter of section 8; all of fractional section 9; northwest quarter, southwest quarter of southeast quarter and east half of southwest quarter of section 17;
66 all of sections 18 and 19; west half of northeast quarter, southeast quarter and west half of section 20; lot 1 of section 21; all of sections 29, 30, 31, and 32; west half of southeast quarter and west half of section 33; lot 2 of section 34, containing six thousand nine hundred and forty-three and sixty-four hundredths acres.

In township thirty-five south of range forty east:

West half of northeast quarter, west half of southeast quarter, and west half section 4; all of sections 5, 6, 7, 8, and 9; east half of southwest quarter of section 10; west half of section 15; all of sections 17, 18, 19, 20, and 21; west half of northeast quarter, northwest quarter, and south half of section 22; west half of lot 3 of section 23; southwest quarter of lots 2 and 3 of section 26; all of sections 27, 28, 29, 30, 31, 32, 33, and 34; west half of northeast quarter, southeast quarter, and west half of section 35, containing thirteen thousand nine hundred and fifty-four and seventy-five-hundredths acres.

In township thirty-six south of range forty east:

West half of northwest quarter and west half of southwest quarter of section 1; all of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; lots 1 and 2, southeast quarter and west half of section 12; all of sections 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, containing twenty-one thousand three hundred and thirteen and seventeen-hundredths acres.

In township thirty-seven south of range forty east:

All of sections 1, 2, 3, 4, 5, 6, 7, 8, and 9; all of fractional section 10; all of sections 11, 12, 13, and 14; all of fractional section 15; all of sections 17, 18, 19, 20, and 21; all of fractional sections 23, 24, 25, and 26; all of sections 27, 28, 29, 30, 31, 32, 33, 34, 35, and
67 36, containing twenty thousand two hundred and twenty and twenty-six hundredths acres.

In township thirty-six south of range forty-one east:

West half of section 19; northwest quarter and south half of section 30; all of section 31; south half of northwest quarter and southwest quarter of section 32, containing 1,680 acres.

In township thirty-seven south of range forty-one east:

Lot 2 of section 4; all of sections 5, 6, 7, and 8; lots 1 and 2 and southwest quarter of section 9; all of sections 17, 18, 19, and 20; southeast quarter of southeast quarter, west half of southeast quarter, and west half of section 21; northeast quarter of northeast quarter, northwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, and south half of southwest quarter of section 28; southeast quarter of southwest quarter, south half of southeast quarter, and north half of section 29; northeast quarter and south half of southeast quarter of section 30, containing sixteen thousand nine hundred and twelve and sixty-six hundredths acres.

In township twenty-seven south of range thirty-two east:

Fractional northwest quarter of section 4; lot one of section 5; lots 3 and 4 of section 9; west half of section 28; all of fractional sections 29 and 31; all of section 32; west half of section 33, containing two thousand and thirty-two and thirty-two hundredths acres—

Containing one million three hundred and sixty thousand six hundred and sixty-five hundredths acres:

To have and to hold unto the said Southern Inland Navigation and Impovement Company and its representatives and assigns forever.

In testimony whereof a majority of the said trustees have
68 hereunto subscribed their names and affixed their seals, and have caused an impression of the seal of the Florida State land office to be made hereupon, at the capitol, in the city of Tallahassee, on this the 10th day of February, A. D. one thousand eight hundred and seventy-one (1871).

HARRISON REED, [SEAL.]
Governor & President Trustees' Int. Imp. Fund.

(Sig.) JAMES B. C. DREW, [SEAL.]
Attorney General State of Fla.

J. S. ADAMS, [SEAL.]
Com. of Immigration & Sec'ty of B'd of Trustees.

S. B. CONNOVER, [SEAL.]
State Treasurer of Florida.

I, J. S. Adams, secretary of the board of trustees of the internal improvement fund of the State of Florida, do hereby certify that the foregoing is a true and correct copy of a deed from the internal improvement fund to the Southern Inland Navigation and Improvement Company, and that a copy of the same is on file in my office.

Witness my hand and seal of office, at the capitol, in the city of Tallahassee, in the State of Florida, this 31st day of March, A. D. 1871.

[SEAL.] J. S. ADAMS,
Com. of Immigration & Sec'y of Board of Trustees.

STATE OF FLORIDA, *St. John's County:*

I hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund to the Southern Inland Navigation and Improvement Company, the same being of record in the county clerk's office, St. John's county, Florida, in Book T, record deeds.

69 In testimony whereof I have hereunto set my hand and official seal this 7th day — April, A. D. 1871.

[SEAL.] CHARLES D. LINCOLN,
Clerk Circuit Court.

STATE OF FLORIDA, *Putnam County:*

I hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund

to the Southern Inland Navigation and Improvement Company, the same being of record in the clerk's office, Putnam county, Florida, in Book "C," record of deeds.

In testimony whereof I have hereunto set my hand and official seal this 7th day of April, A. D. 1871.

[SEAL.] R. H. McLEOD,
Clerk of Court.

STATE OF FLORIDA, *County of Marion:*

I hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund to the Southern Inland Navigation and Improvement Company, the same being of record in the clerk's office for the county of Marion, in the State aforesaid, in book lettered "I" for the records of deeds of conveyances.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the court-house, in the town of Ocala, this the 8th day of April, A. D. 1871.

[SEAL.] JAMES A. HARRIS,
Clerk Circuit Court, Marion County, Florida.

STATE OF FLORIDA, *Orange County:*

I hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund to the Southern Inland Navigation and Improvement Company, the same being of record in the clerk's office of the circuit court
70 of Orange county, Florida, in Book "E," record of deeds.

In testimony whereof I have hereunto set my hand and affixed my official seal this the 11th day of April, A. D. 1871.

[SEAL.] J. O. HUGHEY,
Clerk Circuit Court, Orange Co., Fla.

STATE OF FLORIDA, *Volusia County:*

I do hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund to the Southern Inland Navigation and Improvement Company, the same being of record in the county clerk's office of Volusia county, State of Florida, in Deed Book "A," record of deeds of conveyances.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of said county, at Enterprise, Fla., this twelfth day of April, A. D. 1871.

[SEAL.] WILLIAM S. THAYER, *Clerk.*

STATE OF FLORIDA, }
County of Brevard, } *ss:*

I hereby certify that the foregoing is a true and correct copy of a deed executed by the trustees of the internal improvement fund of the State of Florida to the Southern Inland Navigation and Improvement Company, the same being of record in the clerk's office for the

county and State aforesaid, in book lettered as Book "A" for record of deeds and conveyances.

In testimony whereof I have hereunto set my hand and affixed my official seal, at St. Lucie, in the county and State aforesaid.

[SEAL.] A. M. MOORE,
D'p'ty Clerk C. C., Brevard Co., Fla.

[Endorsed:] United States circuit court, northern district of Florida. The Union Trust Company *vs.* The Southern Inland Navigation and Improvement Company *et al.* Exhibit A.

71 This indenture, made this twentieth day of March, in the year of our Lord one thousand eight hundred and seventy-one, between The Southern Inland Navigation and Improvement Company, a corporation created by and existing under the laws of the State of Florida, party of the first part, and "The Union Trust Company of New York," a corporation duly organized under the laws of the State of New York, party of the second part, witnesseth:

Whereas the party of the first part, under and by virtue of the various acts of the Legislature of the State of Florida, has become and is entitled by grant to certain large tracts of valuable lands, to wit, two million (2,000,000) acres of land, lying and being in East Florida, on and near the St. John's and Indian rivers, as more fully and particularly described in the grants and conveyances of the said lands from the State of Florida to the said party of the first part, which conveyances are recorded in the several counties where said lands lie in the said State of Florida, and has become and is entitled to other property, franchises, and rights of way, including the right of connecting the waters of Key Biscayne Bay by the way of the different inlets, Lake Worth, Indian river, Mosquito lagoon, Halifax river, with the St. John's river by a series of canals, and to connect Indian river, Halifax river, and Mosquito lagoon with the St. John's river or its tributaries by canals, and to dredge out the inside passage from Key West to Key Biscayne Bay and the inside passage from the St. John's to the St. Mary's river, so as to make a steamboat navigation inside from Key West to Fernandina, and to effect the said object the said company has the right to improve any of the said rivers, inlets, or lagoons by dredging, canalling, or making cut-offs, and to construct any locks, dams, or embankments, and to erect such

72 other work or works as they may deem necessary for making, repairing, or keeping in repair any of such works which may be necessary to complete and perfect such inland navigation, and the further rights of the president and directors of said company or their proper authorized agents to enter upon any land or lands, public or private, for the purpose of cutting any canal or to take from any land most convenient to their works any timber, stone, earth, or other materials which may be necessary for the construction of and the keeping in repair such works and improvements, and the further right by and with the consent of the board of trustees of the internal improvement fund of Florida the right of way through all lands owned by the State, and the title to lands for four hundred

feet on each side on any of the lands cut or streams improved, as well as all lands that may be given to the State of Florida by the Government of the United States to aid in any of the said improvements, and levy and collect tolls on all vessels or other water craft which may pass or repass through any canal which said corporation may cut or construct, or that may pass or repass through any channel they may have dredged or deepened, and said company is entitled to demand and receive said tolls upon all produce, merchandise, goods, or other articles which may be transported through any of the canals cut or waters improved by the said company, and the further right to detain all produce, goods, merchandise, boats, or other articles or things which may be transported or conveyed through any of said canals constructed or waters made navigable, and the tolls and fees for which they are liable and respectively chargeable shall be paid and acquitted; and

Whereas the said Southern Inland Navigation and Im-
73 provement Company is authorized by law to borrow the moneys it may deem necessary for the construction, completion, and maintaining of the canals, works, and improvements which it is so authorized to construct, build, and maintain in the State of Florida, and to mortgage its corporate property and franchises or convey the same by deed of trust to secure the payment of any debt so contracted; and

Whereas the said The Southern Inland Navigation and Improvement Company has resolved and determined to negotiate and procure a loan to the amount of two million dollars, and has authorized its president and secretary to make and execute a mortgage or deed of trust of the same tenor as these presents, and to that end to make, execute, and deliver its construction bonds payable to bearer, to be secured by a mortgage and conveyance in trust of and upon the said canals and their appendages and the franchises, income, rights, and property of said corporation therein now possessed or any franchises hereafter to be acquired by it relating thereto, together with the said two million acres of lands, and to negotiate, sell, and dispose of such bonds for the purpose herein specified—that is to say, five thousand bonds of the denomination of one thousand dollars or two hundred pounds sterling, each to be numbered from one (1) to five thousand (5,000) inclusive, each of said bonds to bear date May first, eighteen hundred and seventy-one, and to provide for the payment of principal thereof at the agency of the company in the city of New York or in the city of London on the first day of May, in the year one thousand nine hundred and four, and for the payment of interest on such principal at the rate of seven per centum per annum, payable semi-annually at either of the agencies of the company aforesaid on the presentation of the
74 interest warrants or coupons to be attached to each bond; the said bonds to stand equally and ratably secured hereby without any preference whatever arising from time of issue or otherwise to be issued as required for the purposes aforesaid, and each duly so executed by and under the seal of the party of the first part, hereto signed and attested by its president and secretary, and the

coupons or interest warrants to be authenticated by or with the name of the said secretary; each of said bonds upon being so signed, sealed, executed, and authenticated to be delivered to the party of the second part, who shall countersign or certify the same, which countersigning or certifying shall be conclusive proof that the said bond is secured by this indenture, and each of the said bonds to be of the following form and tenor, to wit:

$1,000. UNITED STATES OF AMERICA, *State of Florida.* S. 200.

The Southern Inland Navigation and Improvement Company's first-mortgage land-grant convertible construction bond, principal and interest payable in gold, free of Government tax, sinking fund provided.

Know all men by these presents that the Southern Inland Navigation and Improvement Company hereby acknowledges — indebted, for value received, to the Union Trust Company of New York or bearer in the sum of one thousand dollars, in United States gold coin at par, to be paid at the agency of the said company in the city of New York, or the sum of two hundred pounds sterling, to be paid at the agency of said Navigation and Improvement Company, in the city of London, England, at the option of the holder hereof, on the first day of May, nineteen hundred and four (1904), with in-
75 terest at the rate of seven per centum per annum, in gold coin as aforesaid, free from any Government tax, at such agency in the city of New York or in the city of London, on the first day of November and on the first day of May in each year until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due.

This bond is one of a series of five thousand similar bonds, numbered from one to five thousand inclusive, all of like amount, tenor, and date, and secured by deed of trust to the Union Trust Company of New York, dated the twentieth day of March, eighteen hundred and seventy-one, and conveying to the said trustees the entire canals, lands (two million acres), and improvements of this company situated and located in the State of Florida, together with all the property, rights, privileges, and franchises in said deed of trust described; and it is hereby expressly agreed by the said company with each and every holder of this bond that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, or in case of the non-payment of any installment required to be paid into the sinking fund provided for by the deed of trust, if such default shall continue for six months after such installment shall have become payable, then and — either case the principal of this bond shall become due in the manner provided in the deed of trust, and the said company hereby expressly waives the benefit of every extension, stay, or appraisement law which has been or may hereafter be enacted.

This bond may at any time be converted by the holder thereof into the land script of this company at par upon the surrender of

this bond with all the unpaid coupons thereto attached, or be
76 exchanged at par for any of the lands of said company at the then regular schedule prices.

This bond is entitled to the benefit of a sinking fund created by said trust deed, to consist of annual deposits, commencing after three years from the date hereof, of one per cent. and the interest thereon at the rate of seven per cent. per annum, in gold coin, of the aggregate principal of the bonds secured by the said trust deed, by the operation of which fund the whole of the said bonds will be redeemed in thirty years from the date of the first annual deposit; and it is also stipulated in and by said trust deed that each and every year after said third year an amount of bonds equal to the accumulations in said sinking fund shall be designated for redemption by lot, and shall be redeemed at the par value thereof, due notice of the numbers of the bonds so designated having been previously published in two or more of the daily newspapers printed in the city of New York for sixty days, at the expiration of which interest on the bonds so designated shall cease.

This bond shall pass by delivery or by transfer in the books of the Southern Inland Navigation and Improvement Company, in the city of New York or London, after a registration of ownership certified hereon by the transfer agent. No transfer, except on the books of the company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registration and tranfers to bearer as aforesaid, at the option of the holder.

This bond shall not become obligatory unless the certificate endorsed hereon is signed by the authorized officer of the said Union Trust Company of New York.

In witness whereof the "The Southern Inland Navigation
77 and Improvement Company" has caused its corporate seal to be hereto affixed and these presents to be signed by its president and secretary on the first day of May, A. D. 1871.

—— ——, *President.*

[L. S.] —— ——, *Secretary.*

Trustees' Certificate.

The Union Trust Company of New York hereby certifies that this is one of — series of five thousand bonds referred to in the within-mentioned deed of trust.

THE UNION TRUST COMPANY
OF NEW YORK,
By —— ——, *President.*

To each of which bonds there is attached interest coupons, numbered from one to sixty-six, inclusive, in the following form:

$35.00. 7.0.0.

The Southern Inland Navigation and Improvement Company will pay the bearer thirty-five dollars, in coin, at its agency in the

city of New York, or, at his option, seven pounds sterling at his agency in London, on November 1st, 18—, interest on bond No. one.

—— ——, *Secretary.*

And on the reverse of every such bond an endorsement as follows:

No. —. UNITED STATES OF AMERICA, *State of Florida.* $1,000.

The Southern Inland Navigation and Improvement Company's seven per cent. gold first-mortgage land-grant convertible construction bond, interest payable in gold coin of the United States in the city of New York, or in English sterling currency in the
78 city of London, at the option of the holder, on the first day of May and the first day of November in each year, free of Government tax.

To each of which bonds there is affixed a United States internal revenue stamp of the amount required by the revenue laws.

And whereas the said The Southern Inland Navigation and Improvement Company has further resolved and determined to issue the script of said company, to be designated and known as "land script," to an amount the par of which shall equal the minimum valuation of the said two million acres of land, and which land script shall represent the said lands, and while the holder thereof to said lands or such proportion thereof as may be represented by the land script so held by him, and to demand and obtain from said company the possession of such lands and a perfect deed or deeds of conveyance therefor, subject, nevertheless, to the mortgage *and* him created by these presents and the provisions hereof in favor of the holders of the said construction bonds:

Now, this indenture witnesseth: That the party of the first part, in consideration of the premises and one dollar to it in hand paid, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued or to be issued as herein recited and provided and each and every part of the said principal and interest as the same shall become due and payable according to the tenor of said bonds and of the coupons or interest warrants thereto attached, has granted, bargained, sold, assigned, set over, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, assign, set over, release,
79 convey, and confirm, unto the party of the second part and its successor or successors or continuing trustee in the trust hereby created all the rights, title, interest, claim, or demand whatsoever which the party of the first part now has or which it shall at any time hereafter acquire or become entitled to, in, and by said aforementioned acts of the Legislature of the State of Florida; also all and singular the canals of the party of the first part, constructed or to be constructed upon or over the line or route hereinafter designated, and also all the lands, tenements, and hereditaments acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of a right of way for said canals, and all the easements and appurtenances thereunto belonging or in anywise apper-

taining, and all canals, ways, rights of way, locks, basins, fences, and other structures; all houses, freight-houses, warehouses, machine shops, workshops, superstructures, erections, and fixtures, whether now held or hereafter at any time to be acquired, for the use of the said canals and lying and being in the counties of Marion, Putnam, St. John's, Orange, Volusia, Brevard, and Dade, in the State of Florida, and all machinery, tools, implements, and materials for the constructing, operating, and repairing said canals or any part thereof or convenient or necessary for use in connection therewith, together with all franchises connected with or relating to said canals or the construction, maintenance, or use thereof now held or hereafter to be acquired by the party of the first part, and all corporal franchises of any nature, including the franchise to be a corporation, which are now or may hereafter be possessed or exercised by the party of the first part, together with all and singular the endowments, income, and advantages to the above-mentioned lands and tenements, canals, or property belonging or in any
80 way appertaining thereto, and the reversion and reversions, remainder and remainders, tolls, fees, incomes, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, present or prospective, of the said party of the first part in and to the same and every part and parcel thereof, with the appurtenances, subject, nevertheless, to the provisions of the several acts of the Legislature of the State of Florida, as aforesaid:

To have and to hold the same unto the said party of the second part, its successor or successors, assign or assigns, to the only proper use, benefit, and behoof of the party of the second part, their successor or successors, assign or assigns, in trust, nevertheless, for the uses and purposes hereinafter declared and expressed: Provided always, and these presents are upon the express condition, That if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said construction bonds or obligations and every of them the principal sums of money therein mentioned according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinafter provided, according to the true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease, determine, and be utterly void; and this indenture further witnesseth that these presents and the first-mortgage land-grant convertible construction bonds or obligations are made, executed, and delivered upon the terms, conditions, and agreements following—that is to say:

1. Article first. That the actual possession, use, management, operation, and control of the said improvements and canals,
81 with all the appurtenances, equipments, and rights *to therein* belonging, shall be and remain with the party of the first part, together with the right to take and use the rents, incomes, profits, issues, and tolls thereof without any molestation or interference of the party of the second part, in the same manner and with the same effect as if this indenture had not been made, as long as

the said construction bonds or obligations shall remain without default or forfeiture and said party of the first part shall perform and keep the stipulations thereof.

2. Article second. That the two millions of acres of land granted as aforesaid shall be carefully valued and appraised by the said party of the first part, their officers and agents, and that the relative value of each piece or parcel of land *embellished* for the purpose of division and allotment thereof into four classes of the following number of acres and valuations—that is to say:

1. First class, consisting of land of special value—	
313,658 acres, at $30 per acre	$9,409,740
2. Second class, of lands of superior agricultural qualities and location—	
168,225 acres, at $20 per acre	3,364,500
3. Third class, of lands of high agricultural qualities—	
196,953 acres, at $10 and $15	2,225,380
4. Fourth class, of lands of the lowest agricultural qualities—	
1,321,164 acres, at $2.50 and $5.00	4,993,077
	$19,992,697

Forming an aggregate minimum valuation for two million
82 acres; all of which the said party of the first part, with as little delay as practicable, shall certify and declare to the said party of the second part by the proper lists and schedules, under seal, with such description as shall enable the party of the second part to ascertain and establish the precise location, position, and boundaries of each and every piece or parcel of said land and the class to which the same belongs and the price or sum for which the same may be sold and conveyed, which price or sum may be varied and charged from time to time at the pleasure of the owners and holders of the said land scrip represented by a majority in the interest of the same, such majority in interest of said land scrip being hereby authorized and empowered to do or have done all and every thing or things necessary or proper to be done in the management or sale of said lands and the protection of the interests of the holders of the land scrip therein; and for the more perfect assurance that the same may be effected the said party of the first part hereto will, and do hereby, designate and appoint the said holders of the said land scrip so acting by the majority in interest therein the true and lawful attorney, irrevocably, of the said party of the first part hereto, and to all and every matter and thing in the name of the party of the first part hereto or in their own name and for their own use and benefit necessary or proper to be done relating to the management or sale of said lands, subject, however, always to the mortgage and lien created by these presents and the provisions hereof in favor of

the holders of the said construction bonds: Provided, however, That the valuation or selling price shall not be less than the lien hereby created.

3. Article third. That the said party of the second part, having received from the said party of the first part such said lists, schedules, allotments, valuations, and selling prices, shall and will grant, bargain, sell, and convey to all persons, bodies politic or corporal, applying for the purchase of the lands and premises above mentioned, making or tendering payment therefor at prices not less than the selling rates established by the said party of the first part, and shall receive in payment therefor lawful money of the United States or at least one-fourth part of the purchase-money in cash and the balance in the surrender of construction bonds or bond at par and accrued interest, and such surrender of construction bonds amounting at par to three-fourths of the valuation of lands so sold shall operate as a full release and discharge of the lands so conveyed therefor from all and every lien and encumbrance created by or under this instrument.

4. Article fourth. That the said party of the second part shall and will cancel and discharge each and every construction bond or obligation and the interest warrants thereon which they may receive in payment for land and as part or the whole consideration of each deed or sale by defacing the seal of the corporation on receipt thereof, and will make or cause to be made on or upon the face thereof a note or memorandum, with proper description of the land sold and conveyed, with the date of the conveyance for which the same has been received and cancelled, in such manner and form as will enable the party of the first — to place and follow the appropriation of all the said construction bonds.

5. Article fifth. That the said party of the second part shall and will set forth and declare in each and every deed of conveyance the true amount of the purchase-money of the land and premises conveyed or intended to be conveyed thereby, and the part thereof for which a bond or bonds may have been received, with the number and amount thereof, and also the sum actually paid in cash for the residue and remainder of said purchase-money, and also, whenever a bond or bonds exceeding the amount of the purchase-money may have been received in payment thereof, the amount in cash actually refunded to the purchaser or holder of said bond or bonds for such excess.

6. Article sixth. That the interest warrants of said construction bonds or obligations becoming due and payable during the progress of the works of construction and up to and inclusive of the warrants of the semi-annual interest becoming due and payable next after the completion and actual use of the said improvements and canals shall be paid from and out of the proceeds and avails of the said construction bonds or obligations as part of the cost of said improvements and canals, but that all interest warrants becoming due and payable thereafter, when the said improvements and canals shall be put in operation, shall be paid from and out of the receipts and income from the use and operation of the said improvements

and canals unless the same be inadequate thereto, which receipts and income are to be appropriated and applied to the following purposes and in the following manner:

First. To the payment of all current charges, such as wages, repairs of improvement canals, locks, etc., as usual and to cover such annual depreciation & shall maintain the same equal to their original valuations, but not inclusive of new and additional improvements and appurtenances, except on special order of the directors after full provision for the payment of the interest, including, however, all the expenses of the incorporation which may be ordered specially as a current charge.

Second. To the payment of the full amount of interest warrants as they semi-annually mature.

Third. To the payment of such dividends as the directors may order from time to time to be paid to the stockholders or to such other appropriation as the directors may order.

7. Article seventh. That the said parties hereto shall and will create, set aside, and preserve an interest fund as further and collateral security for the punctual payment of all the interest warrants of the said construction bonds or obligations at the times when the same severally become due and payable in manner following—that is to say:

First. By the appropriation of the one-fourth part in cash of the proceeds of sale of the said lands set aside for this purpose and held by the trustee therefor.

Second. By the appropriation of this fund of any profit which may be realized by the operation of such parts of the improvements and canals as may be ready for use before the completion of the whole.

8. Article eighth. That the said parties hereto shall and will manage and invest the interest fund in such manner as will render the same at all times readily convertible into cash to prevent any delay in the payment of the interest warrants should the provisions heretofore made and declared at any time — inadequate for that purpose, and for the payment of any deficiency will use and appropriate the said interest fund in the following manner:

First. The current interest of the interest funds.

Second. The invested profits of partial operation.

Third. The said one-fourth part in cash of the proceeds of the sales of lands.

9. Article ninth. In case default shall be made in the payment of any of the interest warrants or coupons annexed to any of the said bonds, according to the tenor thereof, or in any payment required to be made into the interest fund as herein provided, or in the doing or performing of anything herein required to be done or performed by the party of the first part, and in case such default shall continue for a period of six months, then and in that case it shall be lawful for the party of the second part, by its duly authorized officer, agent, or attorney, to enter into and upon all and singular the premises hereby conveyed and to have, hold, and to use the same, under such superintendent, manager, receiver, agent or agents, attorney or

attorneys as the party of the second part may select to take charge of said lands, and to conduct the business of the said improvements and canals, and to exercise the franchises pertaining thereto, and to make from time to time all repairs, replacements, additions, and improvements thereto as may seem judicious, and to collect all earnings, dues, freights, incomes, rents, tolls, fees, issues and profits of the same and of every part thereof, and, after deducting the expenses of operating the said improvements and canals and of conducting the business thereof and all of the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises or any part thereof prior to the lien of these presents, to apply the money arising as aforesaid to the payment of the interest in the order in which such interest shall have become due, ratable to the persons holding the coupons or interest warrants evincing the right to such interest; and, after paying all interest which
87 shall have become due, to the payment of any installment or balance due and payable to the interest fund herein established, and, after paying all such past-due interest and all installments or balances due the interest fund, to apply the same to the satisfaction of the principal of the aforesaid bonds which may be at that time unpaid ratable and without discrimination or preference; and any bondholder, on any default herein mentioned, may institute a suit on his bonds, and shall, according to the ordinary practice of tribunals of equity, be entitled to have a receiver appointed to take charge of said lands and sell and dispose of the same and to operate said improvements and canals and receive and dispose of the earnings thereof for the benefit of the bondholders.

10. Article tenth. In case default shall be made as aforesaid and shall continue as aforesaid, it shall likewise be lawful for the party of the second part, after entry as aforesaid or without entry, on the written request of two-thirds of the bonds issued hereunder, to sell and dispose of the premises hereby conveyed (excepting thereupon such parcels or portions thereof as may have been released or retired by the surrender of bonds received on sales of lands from the operation of the lien or incumbrance created by this instrument) at public auction — the city of New York or in the city of Jacksonville, Florida, or in such place as the said party of the second part may designate, having first given notice of the place and the time of such sale by advertisement published not less than once a week for six months in one or more newspapers published, respectively, in the city of New York and in said Jacksonville, Florida, and to adjourn the sale from time to time by announcement at the time and place advertised without other notice, and to make and
88 deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds in fee simple, which sale made as aforesaid shall be a perpetual bar, both in law and equity, against the party of the first part and all other persons lawfully claiming the said lands, premises, or property, or any part thereof, by, from, through, or under it; and after deducting from the proceeds — such sale all just allowances from all expenses of such sale, including attorneys' and counsel fees and all other expenses or liabilities which

may have been made or incurred by the said trustee in operating the said improvements and canals, and all payments which may have been made by them for taxes and assessments and for charges and liens prior to the lien of these presents, if any, upon the said lands, premises, and property or any part thereof, as well as compensation for these services, to apply the said proceeds to the payment to the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, of the interest which at that time shall have accrued on the said principal and be unpaid, without discrimination or preference, but ratably to the aggregate amount of such unpaid principal and accrued interest, and after satisfaction thereof to pay over the surplus of such proceeds as shall remain to the said party of the first part or to such other parties as may then be entitled to receive the same; and it is hereby declared that the receipt or receipts of the said trustee shall be a sufficient discharge to the purchaser or purchasers of the said lands, premises, and property or any part thereof for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall
89 not after payment thereof, having such receipt, be liable to see that such purchase-money is applied upon or for the trusts or purposes of these presents or be in any manner whatsoever liable or answerable for any loss, misapplication, or non-application of such purchase-money or any part thereof or be obliged to enquire into the necessity, expediency, or authority of or for any such sale.

And it is expressly stipulated that at any sale as aforesaid, whether under the power herein granted or by judicial authority, the party of the second part may bid for and purchase the lands, premises, or property so sold or any part thereof in behalf of the holders of the bonds secured by this instrument and then outstanding in proportion to the respective interests of such bondholders.

11. Article eleventh. In case default shall be made in the payment of any half year's interest on any of the aforesaid bonds according to the tenor of the coupons annexed thereto, and if such default shall continue for the period of six months after such coupons shall have become due and payable and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if the holders of five hundred thousand dollars in the aggregate of said bonds shall so direct in writing before the interest so in arrears has been paid, shall be declared by the party of the second part to be immediately due and payable, and thereupon the same shall become due and payable, anything contained in the said bonds or herein to the contrary notwithstanding.

12. Article twelfth. All moneys received by the said party of the second part upon the sale of lands herein described, except the one-fourth part in cash of such proceeds set apart for the interest fund herein created, shall be invested by said
90 party of the second part in the bonds of the United States at their then current rate or in said construction bonds at not to exceed ten per cent. above their par value, and such bonds shall be held by the said trustee in the place and stead or in the lien

of the lands from which moneys were realized and subject to the provisions of this mortgage; and any interest accruing and paid on any bonds of the United States held by the said trustee hereunder shall be reinvested in the bonds of the United States, which shall be held by the said trustee in like manner.

Meetings of the holders of the bonds secured by this instrument may be called by the party of the second part or in such other mode as may be fixed by regulations prescribed or established as hereinafter provided, and the bondholders may vote thereat, either in person or by proxy, and the quorum may be deferred, and such other regulations or by-laws in respect to such meetings may be from time established, altered, or repealed by the bondholders, acting by a majority *or* interest, as to them shall seem expedient, and until the bondholders shall act such *persons* may be temporarily exercised by the trustee.

The trustee shall have a right to require, at its option, that any act or resolution of the said bondholders affecting the duties of the trustee hereby created shall be authenticated by the signatures of all the persons assenting thereto as well as by a minute of the proceedings of any such meeting.

And meetings of the holders of said land scrip may be called by said party of the second part hereto or by a majority in interest of the holders of said land scrip, and the holders thereof may vote thereat, either in person or by proxy, and the quorum may be defined and such regulations or by-laws in respect to such meet-
91 ings may be from time to time established, altered, or repealed by scripholders, acting by a majority in interest, as to them shall seem expedient; and should it become necessary that any further or other act or acts should be done, or further or other authority given to give full force and effect to any resolution or resolutions that may be passed by the said majority in interest of said scripholders relating to the management and disposition of the said lands, as herein provided, the parties hereto shall and will do and perform such act or acts and give and grant such further authority as may be necessary and proper therefor.

13. Article thirteenth. The said party of the first — shall from time to time and at all times hereafter, and as often as hereunto requested by the trustee, make, execute, and deliver unto the party of the second part all such further deeds, conveyances, and assurances in the law for the better assuring unto the party of the second part and its successor or successors in the trust hereby created and upon the trust herein expressed the lands, premises, property, equipments, and appurtenances hereinbefore mentioned and referred to or intended so to be or any part thereof, and all franchises now held or hereafter acquired relating to the improvement and canal herein described, including the franchise to be a corporation, as by the trustee or by its counsel learned in the law shall be reasonably devised, advised, or required; and the party of the first part shall furnish to the trustee from time to time, upon his reasonable request in writing, a full and true inventory of all the movable property appertaining to the said improvements and canals and the operation

thereof, and which is transferred or agreed or intended to be transferred by this indenture, but no default to demand or to fur-
92 nish such inventory shall impair the operation of this indenture upon any or all of the property herein agreed to be transferred or intended to be transferred.

14. Article fourteenth. The trustee shall have full power, in its discretion and upon the written request of the party of the first part, to convey, by release or otherwise, to the persons designated by the party of the first part the whole or any part of any lands acquired or held or used for the purpose of stations, shops, or other buildings or erections, or the uses connected therewith, and shall also have power to convey as aforesaid, on like request, any lands or property which in the judgment of the trustee shall not be necessary for use in connection with the said improvements and canals, or which may have been held for a supply of a material for the use thereof, and also to convey as aforesaid, on like request, any lands not occupied by the same, or which may become disused by reason of a change of the location of any station, shop, or other building connected with the said improvements and canals, and such lands occupied by and adjacent to such station, shop, or other building as the said company may deem it expedient to disuse or abandon by reason of such change, and to make such other *damages* in the location of the stations, shops, or other buildings as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use in substitution for any so released shall be conveyed to the trustee upon the trusts of these presents, and the trustee shall also have full power to allow the said company from time to time to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said improvements and canals as
93 may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustee or be otherwise made subject to the operation of these presents.

15. Article fifteenth. The said party of the first part shall at all times hereafter keep at its office or agency in the city of New York, and also at its office or agency in the city of London, England, transfer books for the transfer of the bonds aforesaid and for the transfer of the land script of the said company.

16. Article *fifteenth*. It is hereby declared and agreed that it shall be the duty of the trustee to exercise the power of entry hereby granted and conferred or the power of sale hereby granted, conferred, and delegated, or both, or to institute appropriate legal proceedings to enforce the rights of the bondholders under these presents, upon the requisition in writing, as hereinafter specified, as applicable to the several cases of default in the manner and subject to the qualifications hereinafter provided as follows, to wit:

First. If the default be as to interest or principal of any bonds such requisition upon the said trustee shall be by holders of not less than five hundred thousand dollars in the aggregate amount of the said bonds, and upon such requisition and a proper indemnification

by the persons making the same to the trustee against the cost and expenses to be by them incurred it shall be the duty of the trustee to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings as they, being advised by counsel learned in the law, shall deem most expedient for the interest of all the holders of the said bonds.

Second. If the default be in respect of any payment into the interest fund hereinbefore established, or be in the omis-
94 sion of any act or thing required by these presents for the better assuring of the title of the trustee to any property herein named, or to any franchise now possessed or hereafter acquired, or in any other provision herein contained to be performed or kept by the said company, then, and in either of such cases, the requisition shall be as aforesaid; but it shall be within the discretion of the trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the powers hereby declared of a majority in interest of the holders of said bonds, by a requisition in writing or by a vote at a meeting duly held to instruct the said trustee to waive such default, or upon adequate indemnity, as aforesaid, to enforce their rights by reason thereof: Provided, That no action of the said trustee or bondholders, or both, in waiving such default shall extend to be taken to effect any subsequent default or to impair the rights resulting thereupon.

17. Article seventeenth. Whenever all the said construction bonds shall have been received by the said trustee in payment for land, or shall have been in any other manner fully paid or discharged, then and in that case the balance of the moneys or securities (other than said bonds) remaining in the hands of the said trustee that may have been received upon the sales of said lands or that may hereafter be received from the sale of said lands shall be used by the said trustee for the retiring and discharging of the said land scrip of the said company, which land scrip shall be received by said trustee at par in full payment for any of said lands remaining unsold at the schedule price for the same.

18. Article eighteenth. And, for the purpose of providing a sinking fund for the redemption of the bonds secured hereby,
95 it is further understood and agreed between the said parties hereto as follows: The party of the first part shall pay to the party of the second part, its successor or successors in this trust, on the first day of May, A. D. one thousand eight hundred and seventy-four, a sum equal to one per cent., in gold coin aforesaid, of the aggregate principal of the said construction bonds herein described, and shall also pay on or before the first day of May in every year thereafter a like sum and interest at the rate of seven per cent. in the same coin upon all payments theretofore made.

And it is further mutually agreed by and between the parties hereto that immediately after the payment into the sinking fund of any sum of money hereby required to be paid the party of the second part, its successor or successors in this trust, will designate by lot a number of bonds sufficient to equal as near as may be the accumulations of the said fund applicable thereto for redemption at the par

value thereof, and shall thereupon cause a notice to be printed in two or more of the daily newspapers published in the city of New York for sixty days; and the said party of the first part shall cause a like notice to be conspicuously posted in the office of each of the agencies of the said party of the first part in Europe stating the number of the bonds so designated for redemption, and at the expiration of such time interest on the said bonds shall cease.

19. Article nineteenth. It is mutually agreed by and between the parties hereto that the word "trustee" as used in these presents or the expression "said trustee" as so used shall be construed to mean the trustee for the time being, and whenever any vacancy
96 may be created a majority of the bondholders interested shall have the right to appoint a successor or continuing trustee, and the acceptance of such appointment in writing shall immediately and by effect of such written appointment and acceptance vest in said new trustee all the estate, rights, property, and interests hereby conveyed as fully and completely as if he had been herein named as the party of the second part.

20. Article twentieth. And it is further mutually agreed by and between the parties hereto, and it is hereby declared to be a condition upon which the party of the second part has consented hereto, that if the second trustee shall not be held responsible for any act, default, or misconduct of any agent or person employed by it in good faith, nor shall it be answerable except for its own wilful default or misconduct, and in case said trustee shall go into possession of the said mortgaged premises and operate the same, as hereinbefore provided, it shall be indemnified out of the funds or property which shall come into its hands as aforesaid for all claims and demands against it arising from the negligence, carelessness, or misconduct of its employers, and in all cases said trustee shall be authorized to pay such reasonable compensation as it shall deem proper to all the attorneys, servants, and agents it may reasonably employ in the management of its trust.

21. Article twenty-first. It is mutually agreed by and between the parties hereto that at all times until the said bonds shall be fully paid, with the interest due and to grow due thereon, the party of the first part will permit the trustee, its agent or attorney for that purpose appointed and authorized, to inspect all the books of account of the party of the first part and to take such extracts there-
97 from as the said party of the second part shall direct.

22. Article twenty-second. The party of the first part, in consideration of the premises and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, further covenants & agrees with the party of the second part to keep open an office or agency in the city of New York and in the city of London, England, for the payment of the principal and interest of the bonds hereby secured as the same shall become payable and for the transfer and voting registration of such bonds.

23. Article twenty-third. The party of the first part further covenants and agrees with the party of the second part that the proceeds of the said bonds shall at all times be faithfully applied to

the uses and purposes herein specified and to no other purpose whatever.

24. Article twenty-four. If the party of the first part shall well and hereby pay the sums of money herein required to be paid by the said party of the first part and all the interest thereon at the times and in the manner herein specified, and shall well and shall truly keep and perform all the things herein required to be kept and performed by the said party of the first part according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said party of the second part and of its successor in the trust hereby created shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

In testimony whereof the Southern Inland Navigation and Improvement Company, the party of the first part, has caused its corporate seal to be hereto affixed and these presents to be attested by the signatures of its president, treasurer, and secretary, and
98 the party of the second part, the said "The Union Trust Company of New York," has caused its corporate seal to be hereto affixed and the same to be attested by its president to signify its acceptance of the said trust on the day and year first above written.

[Seal of Company.]

N. H. MORAGNE,
Pres't S. I. N. and Imp't. Co.
CHARLES L. MATHER,
Treas. and Sec't'y S. I. N. and Imp't. Co.

[Seal of Union Trust Company.]

UNION TRUST COMPANY OF NEW YORK,
By J. H. FROTHINGHAM, *President.*

Witnesses:
M. D. BOMUTHEAN.
F. A. CANOVAR.

This deed of trust was duly recorded as follows:
Recorded in St. John's county April 6, 1871.
Recorded in Putnam county April 7, 1871.
Recorded in Marion county April 9, 1871.
Recorded in Orange county April 11, 1871.

I hereby certify that I have carefully compared the foregoing with the original mortgage deed signed by the duly authorized officers of "The Southern Inland Navigation and Improvement Company," and find the same to be a true and perfect copy.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourteenth day of April, A. D. 1871.

[Seal of Notary. Stamp.]

CHAS. V. WARE,
Notary Public, New York County.

HER BRITANNIC MAJESTY'S CONSULATE, NEW YORK.

I, Edward Mortimer Archibald, Esq., companion of the most honorable Order of the Bath, her Britannic Majesty's consul, do
99 hereby certify that Charles V. Ware, Esquire, whose true signature and seal are, respectively, subscribed and affixed to the certificate hereunto annexed, was, on the day of the date thereof, a notary public in and for the State of New York, duly commissioned and sworn, to whose official acts faith and credit are due.

In testimony whereof I do hereunto set my hand and seal of office, at the city of New York, this fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-one.

By the consul:

[SEAL.] PIERREPONT EDWARDS,
Vice-Consul.

[Endorsed:] United States circuit court, Northern District of Florida. The Union Trust Company *vs.* The Southern Inland Navigation and Improvement Company *et al.* Exhibit "B." Filed April 12, 1883. Philip Walter, clerk.

100 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to the Southern Inland Navigation & Improvement Company & W. D. Bloxham, Gov.; Geo. P. Rancy, att'y gen'l; H. A. L'Engle, treas.; W. D. Barnes, comptroller, & P. W. White, commissioner of lands, &c., who are *ex officio* trustees of the Internal Improvement Co. of Fla.:

We command you and every of you that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the 7th day, of May next, to answer to a bill of complaint exhibited against you by the Union Trust Company of New York, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf; and this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 16 day of April, A. D. 1883.

[SEAL.] PHILIP WALTER, *Clerk.*

JAMES B. C. DREW,
Solicitor for Compl't.

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the

above is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

101 [Endorsed:] No.—. Circuit court United States, northern district of Florida. The Union Trust Company of New York *vs.* Southern Inland Navigation & Improvement Co. Chancery subpœna. Returnable to rule day first Monday in ——, A. D. 187–. —— ——, clerk. Filed June 30, A. D. 1883. Philip Walter, clerk. —— ——, complainant's solicitor.

Executed the within chancery subpœna, at Tallahassee, in the northern district of Florida, on the 18th day of April, 1883, upon Wm. D. Bloxham, Gov. of Florida; Henry A. L'Engle, treasurer of Florida; P. W. White, com'ss. of lands of Florida; W. D. Barnes, comptroller of Florida, & George P. Raney, att'y gen'l of Florida, *ex officio* trustees of the internal improvement fund of Florida, by delivering to and leaving with each of them a true copy hereof, at the same time exhibiting to each of them the original subpœna, with seal of court attached.

JOSEPH H. DURKEE,
U. S. Marshal.

Executed the within writ — subpœna by delivering a true copy hereof to A. D. Basnett, sec't'y & treasurer of the Southern Inland Navigation & Improvement Company, on the 19th day of April, A. D. 1883, at Jacksonville, within the northern district of Florida, and exhibiting to him this original, with the seal of the court attached.

JOSEPH H. DURKEE,
U. S. Marshal,
By JOHN S. DRIGGS, *Dep.*

102 United States Circuit Court, Northern District of Florida, at Jacksonville. May Rules, A. D. 1883. In Equity.

THE UNION TRUST COMPANY OF NEW YORK, Compl't,
vs.
WM. D. BLOXHAM, Governor, *et als.*, Trustees of the Internal Improvement Fund of the State of Florida, *et al.*

I hereby appear for Wm. D. Bloxham *et als.*, the trustees of the internal improvement fund of Florida, specially for the purpose of moving that the subpœna in the cause be quashed on the grounds that it should have issued out of the clerk's office at Tallahassee and been made returnable thereto, and to the event such motion is denied I should move that the case be transferred to Tallahassee.

May 7th, 1883.

GEO. P. RANEY,
Sol. for Trustees I. I. Fund of Fla.

[Endorsed:] U. S. cir. c't, Jacksonville, Fla. Union Trust Co. of N. Y. *vs.* Trustees I. I. Fund *et al.* Special appearance of Trustees I. I. Fund. Filed May 5, 1883. Philip Walter, clerk. G. P. Raney, sol. for T's I. I. —, Fla.

103 In the United States Circuit Court, Northern District of Florida. In Chancery.

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE SOUTHERN INLAND NAVIGATION & IMPROVEMENT Co. *et als.*

The clerk will please enter an appearance in the said cause for the defendant, The Southern Inland Navigation and Improvement Company.

Monday, May 7th, 1883.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY,
By W. H. GLEASON, *President.*

To Philip Walter, Esq., clerk, etc.

[Endorsed:] In cir. c't U. S., N. dist. Florida. The Union Trust Co. of New York *vs.* The Southern Inland Navigation & Improvement Co. *et al.* Appearance for def't, The Southern Inland Nav. & Imp. Co. Filed May 7th, 1883. Philip Walter, clerk.

104 In the Circuit Court of the United States, 5th Circuit, Northern District of Fla. In Equity.

The demurrer of William D. Bloxham, Governor of the State of Florida, *et als.*, who are the trustees of the internal improvement fund of the State of Florida, to the bill of complaint of the Union Trust Company of New York, a body corporate and citizens of the State of New York, against said trustees and the Southern Inland Navigation and Improvement Company, defendants.

These defendants, the said trustees, by protestation, not confessing all or any of the matters and things in complainant's bill of complaint contained to be true in such manner and form as is therein set forth and alleged, do demur to said bill, and for cause of demurrer show that the complainant hath not in and by its said bill made or stated such a case as entitles it in a court of equity to any relief against them as to the matters contained in the said bill or any of such matters. Wherefore, and for divers other good causes of demurrer appertaining in said bill, these defendants do demur thereto, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

GEO. P. RANEY,
Sol. and of Counsel for W. D. Bloxham et al.,
Trustees I. I. Fund of Florida.

I hereby certify that in my opinion the above demurrer is well founded in law.

105 GEO. P. RANEY,
Sol. for Trustees I. I. Fund Fla.

[Endorsed:] Demurrer of Trustees I. I. Fund.

United States of America, 5th Circuit, Northern District of Florida.

Before Fred. T. Myers, U. S. commissioner, at Tallahassee, in said district, personally appeared Wm. D. Bloxham, Governor; Wm. D. Barnes, comptroller; Henry A. L'Engle, treasurer; P. W. White, commissioner of lands and immigration, and Geo. P. Raney, attorney general of said State, who are trustees of the internal improvement fund of Florida, and they, being duly sworn, say that the above demurrer is not interposed for delay.

GEO. P. RANEY.
HENRY A. L'ENGLE.
P. W. WHITE.
W. D. BLOXHAM.
W. D. BARNES.

Sworn to and subscribed before me, at Tallahassee, May 25, 1883.

FRED. T. MYERS,
U. S. Commissioner, at Tallahassee,
5th Judicial Ct., Northern Dist. of Florida.

105½ [Endorsed:] U. S. cir. c't, north'n dist. Fla., Jacksonville. In equity. Union Trust Co. of N. Y. *vs.* South'n In. N. & I. Co. and trustees I. Imp. Fund Florida. Demurrer of trustees intern'l imp. fund Fla. Filed June 4th, 1883. Philip Walter, clerk. Geo. P. Rainey, sol. for trustees I. I. F., Fla.

106 United States Circuit Court, Northern Dist. of Florida.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY *et al.*

At the request of W. H. Gleason, Esq., who has appeared for the above-named defendant, The Southern Inland Navigation and Improvement Company, as its president, the time for answering the bill of complaint filed in this cause is hereby extended to the July rules day, 1883. This extension applies to the defendant, The Southern Inland Navigation and Improvement Company, only, represented by W. H. Gleason, Esq.

May 10th, 1883.

J. B. C. DREW,
Sol. for Complainant.

106½ [Endorsed:] U. S. cir. court, northern dist. of Florida. The Union Trust Co. *vs.* The Southern Inland Navigation and Improvement Company *et al.* Consent for extension of time to answer. May 10th, 1883. Filed June 4th, 1883. Philip Walter, clerk. J. B. C. Drew, sol. for complainant.

107 In the Circuit Court of the United States, Northern District of Florida, 5th Circuit. In Equity.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY *et al.*

And now comes the defendant, The Southern Inland Navigation and Improvement Company, by Edward M. Cheney, its attorney, and says that the bill of complaint of the said complainant is bad in substance, and for cause of demurrer the defendant shows that the complainant hath not in and by its said bill made or stated such a case as entitles it in a court of equity to any relief as against this defendant as to the matters contained in said bill or any of them.

Wherefore, and for other good causes of demurrer appearing in said bill, this defendant demurs thereto and pays the judgment of this honorable court whether it shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

E. M. CHENEY,
Sol. and of Counsel for the S. I. N. and I. Co.

I hereby certify that, in my opinion, the above demurrer is well founded in law.

E. M. CHENEY,
Sol. for S. I. N. & Imp. Co.

UNITED STATES OF AMERICA, *Northern District of Florida:*

108 Edward M. Cheney, the attorney for the Southern Inland Navigation and Improvement Company, being duly sworn, says that the above demurrer was not interposed for the purpose of delay.

EDWARD M. CHENEY,
Attorney for S. I. N. and Imp. Co.

Subscribed and sworn to before me this 17th day of August, A. D. 1883.

[SEAL.] JOHN S. DRIGGS,
Dep. Clerk U. S. Courts.

[Endorsed:] U. S. cir. court, northern district of Florida. The Union Trust Company *vs.* The Southern Inland Navigation and Improvement Company *et al.* Demurrer of So. In. Nav. & Imp. Co. Filed August 17, 1883. Philip Walter, clerk. E. M. Cheney, sol. for S. I. N. & Imp. Co.

109 *In Re Petition of Wm. H. Gleason.*

In U. S. Cir. Court. In Equity.

UNION TRUST COMPANY *vs.* SOUTHERN INLAND N. & I. Co. *et als.*

GREENOUGH, Administrator of Vose, *vs.* TRUSTEES I. I. FUND.

JACKSONVILLE, FLA., *Oct. 23rd*, 1884.

By consent of the parties in the above cases, made before me this day, the time for taking testimony therein is extended to Jan'y 1st, 1885.

THOMAS SETTLE, *Judge.*

[Endorsed:] Judge Settle's order of Oct. 23, '84.

110 United States Circuit Court, Northern District of Fla.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY.

And now comes the above-named complainant and joins in the demurrer.

J. B. C. DREW,
Sol. for Complainant.

[Endorsed:] The Union Trust Co. *v.* Southern Inland Navigation and Improvement Co. Joinder in demurrer. Filed Jan'y 21st, 1884. P Walter, clerk. J. B. C. Drew, sol. for complainant.

111 In United States Circuit Court, Northern Dist. of Fla. In Equity.

THE UNION TRUST COMPANY, Complainant,

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY, Defendant.

It is ordered, on motion of the complainant, that the dismissal of the original bill filed herein as the trustees of the internal improvement fund be, and is, set aside; and, on motion of the trustees of the internal improvement fund, it is ordered that they have leave to withdraw their demurrer to the said bill, and they are required to answer said bill by the first Monday in March next.

Done and ordered in open court this 26th day of January, A. D. 1884.

THOMAS SETTLE, *Judge.*

[Endorsed:] Union Trust Co. *vs.* Southern Inland Nav. Co. Decree. Filed Jan'y 26th, 1884. Philip Walter, clerk.

112 Circuit Court of the U. S., of the 5th Circuit, Northern District of Florida. In Equity.

THE UNION TRUST COMPANY OF NEW YORK

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY.

To the Honorable Thomas Settle, judge, presiding:

The petition of William D. Bloxham, Governor of Florida; William D. Barnes, comptroller; Henry A. L'Engle, treasurer; P. W. White, commissioner of lands and immigration, and Geo. P. Raney, attorney general of said State, *ex officio* trustees of the internal improvement fund of said State, respectfully shows unto your honor that they are now *had* & have since a time prior to the filing of the bill of complaint in the above cause been such officers and trustees.

II.

That they were named as defendants in said bill of complaint and served with process of subpœna to answer the same, such subpœna being served on them soon after the filing of said bill. They demurred to said bill, as will appear by the files in said cause, on the ground that it did not state a case entitling it to relief in a court of equity.

III.

After such demurrer had been filed the complainant, proceeding *ex parte*, filed a dismissal of said cause as to their petitions.

IV.

Petitioners represent*ing* to your honor that they are ma-
113 terial and necessary parties to said cause, and that no decree can be made therein in their absence therefrom as parties.

The conveyances alleged to have been made by their predecessors with Southern Inland Navigation and Improvement Company was made in violation of an injunction of this court issued in December, 1870, in the case of Francis Vose *vs.* The Trustees of the Internal Improvement Fund of Fla., referred to — said bill of complaint, Harrison Reed and others then being such trustees and the said Southern Inland Navigation and Improvement Co. being at the time of the execution of such conveyance a party defendant to said suit to which said injunction was issued. Soon after the making of such deed attachments were issued against the then trustees of said fund for violating said injunction by making such deed, as well as otherwise, and proceedings instituted to set aside the same, remitting in the decree of December 4th, 1873, referred to in the bill of complaint of said Union Trust Company of New York, which decree, as well as other decrees and proceedings in said cause of Francis Vose *vs.* The Trustees of the Internal Improvement Fund, these petitioners pray leave to read in support of and as a part of this petition; that by said decree the lands covered by said deed

were restored to the possession of these petitioners, and they still have part of them, as alleged in said bill of complaint. They have sold a part thereof, as directed by said decrees, to pay off the lien and indebtedness against said fund held by said Vose, as well as other persons, in the shape of coupons of railroad bonds, which were under the provisions of the internal improvement act of Florida a first and preferred lien on said lands in the year 1876. The said
114 Southern Inland Navigation and Improvement Company filed a petition in said cause, wherein Francis Vose was complainant, and prayed that said decree of Dec., *for* 1873, should be vacated, and that the said company should be allowed to answer or plead to said bill of complaint of Francis Vose, but on the 26th day of March, 1877, a decree was made therein denying the prayer of said petition, which decree petitioners pray leave to read as a part hereof.

Wherefore your petitioners pray that they may be made parties defendant to said bill of complaint of the said Union Trust Company of New York, and that no proceedings be taken herein in their absence; and as in duty bound petitioners will ever pray.

FLEMING & DANIAL,
Sol. for Petitioners.
GEO. P. RANEY, *Sol.*

[Endorsed:] The Union Trust Co. *vs.* The Southern Inland Navigation & Improvement Co. Petition of trustees internal improvement fund to be made parties defendant. Filed Jan'y 26th, 1884. Philip Water, clerk.

115 United States Circuit Court, Northern District of Florida.
December Term, 1884.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY *et al.*

The cause coming on to be heard on the demurrer to the bill of complaint herein interposed by the defendant, The Southern Inland Navigation Improvement Company, after argument of counsel, to wit, J. B. C. Drew, Esq., for the complainant, E. M. Cheney, for defendant—

Ordered, That the said demurrer be, *in* the same is hereby, overruled, with leave to the said defendant to file its answer on or before the rules day in March next.

January 28th, 1884.

THOMAS SETTLE, *Judge.*

[Endorsed:] U. S. circuit court, northern dist. of Florida. The Union Trust Co. *vs.* The Southern Inland Navigation and Improvement Company *et al.* Order overruling demurrer of Southern Inland Navigation & Improvement Co. Filed Jan'y 28, 1884. Philip Walter, clerk. J. B. C. Drew, sol. for complainant.

116 U. S. Circuit Court, Northern District of Fla. Dec. Term, 1883.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY.

On motion of J. B. C. Drew, Esq., solicitor for the complainant, and the solicitor for the defendant consenting—

Ordered, That the amended bill herein filed be, and the same is, dismissed, and that the original bill filed herein stand as the bill of complaint in this cause.

January 29th, 1884.

THOMAS SETTLE, *Judge.*

[Endorsed:] U. S. circuit court, northern dist. of Florida. The Union Trust Co. *vs.* The Southern Inland *and* Navigation and Improvement Company *et al.* Order dismissing the amended bill. Filed Jan'y 29, 1884. P. Walter, clerk. J. B. C. Drew, sol. for complainant.

117 STATE OF FLORIDA, *Northern District of Florida,* } *ss:*

In the U. S. Circuit Court, Northern District of Florida.

THE UNION TRUST COMPANY OF NEW YORK

vs.

THE TRUSTEES OF THE INTERNAL IMP. FUND and THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY.

William H. Gleason, being duly sworn, deposeth and saith that he is the president of def't Co., viz., The Southern Inland Navigation and Improvement Company, and that he is unable to collect the necessary documents and facts for use of his counsel in the preparation of the answer for def't company in the above-entitled action; that important documents and papers necessarily connected with and important for the preparation of the answer for the def't company herein are in London, England, in possession of agents of the company; that he will be unable to procure the same in time for his counsel to prepare the answer in above suit by rules day in March next, and will therefore be unable to file said answer on that day, according to the order made in the case, by the first Monday in March next; that he has made and exercised all possible diligence to obtain said important documents and papers from said agents in London and in New York, and he verily believes that he will be able to procure said papers and documents so that his counsel can prepare his answer to be filed on or before the 15th day of March next.

W. H. GLEASON,
Pres't S. I. N. & I. Co.

118 Subscribed and sworn to before me this 16th day of February, 1884.

PHILIP WALTER, *Clerk.*

U. S. Circuit Court, Northern District of Florida.

THE UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY *et al.*

This cause coming on this day to be heard, on motion of Edward M. Cheney, solicitor for the Southern Inland Navigation and Improvement Company, J. B. C. Drew, Esq., solicitor for the complainant, being present and heard, it is declared that the said defendant company have until the 13th day of March next in which to file the answer to the complainant's bill.

Done in open court this 16th day of February, 1884.

THOMAS SETTLE, *Judge.*

[Endorsed:] In the United States circuit court, northern district of Florida. The Union Trust Co. of New York *vs.* The Internal Improvement Fund and The Southern Inland Navigation and Improvement Company. Affidavit of def't Co. and order for extending time for filing answer. Filed Feb. 16th, 1884. P. Walter, clerk.

119 Circuit Court of the United States, 5th Circuit, Northern District of Florida. In Equity.

The answer of William D. Bloxham, Governor; William D. Barnes, comptroller; Henry A. L'Engle, treasurer; P. W. White, commissioner of lands and immigration, and George P. Raney, attorney general of the State of Florida, and *ex officio* trustees of the Internal Improvement Fund of the State of Florida, as such trustees, to the bill of complaint filed by the Union Trust Company of New York against them and the Southern Inland and Navigation and Improvement Company in the above court.

These defendants, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereof as these defendants *as* advised it is material or necessary for them to make answer to, answering, say:

These defendants have not sufficient knowledge or information to enable them to say whether or not the said complainant company was or is a corporation duly created and organized and existing under and by virtue of the laws of the State of New York, having its place of business in the city and State of New York, as alleged in said bill, but are utter strangers to such matters, and therefore defendants deny each and every allegation thereunto made, and call for strict proof of the same.

It is true that on the sixth day of January, A. D. 1855, a
120 statute of the State of Florida entitled "An act to provide for and encourage a liberal system of internal improvements in this State" was approved by the Governor. Amendments to said statute have subsequently been made by the legislative power of said State, and defendants pray reference to said statutes whenever it may be necessary to ascertain the true meaning and effect of the same and the powers and duties of the trustees of the internal improvement fund thereunder.

It is further true, and defendant says that by the 4th section of said internal improvement act "a canal from the waters of St. John's river, on Lake Harney, to the waters of Indian river" was declared a proper improvement "to be aided from the internal improvement fund" in the manner thereinafter provided in said act, but the canals and works contemplated by the so-called statutes of A. D. 1868 & 1869, organizing the said Southern Inland Navigation and Improvement Company, being chapters 1644 and 1706, were not declared by said internal improvement act to be improvements to be aided by the said fund. The seventeenth section of said act provided "that as the board of internal improvement recommended the construction of a navigable canal connecting the waters of the St. John's with those of Indian river, the State engineer is hereby authorized to make a final location of the same as soon as practicable and furnish detailed estimates and plans for the information of persons desirous of engaging in the work and invites bids for its execution for one year, the bidders to specify the amount for which they will do this work and the mode and manner in which payments are to made, whether in lands or in money or in
121 portions of each, and the trustee of the internal improvement fund are hereby authorized to pay out of said fund as the work progresses the whole amount agreed on by the terms of the contracts, provided the entire cost shall not exceed four thousand dollars in money and four thousand acres of land per mile, provided, further, That the trustees of the internal improvement fund shall be of the opinion that this sum of money can be *im*plied to said purpose without impairing the efficiency of the fund for railroad purposes" It is further true, and defendants so allege, that in the year 1857 a statute was enacted by the legislative power of Florida, the same having been approved on the first day of January, entitled "An act to facilitate the construction of the St. John's and Indian River canal"—that is to say, the canal from Lake Harney provided for and contemplated by said internal improvement act—and under said statute approved January first, 1857, commissioners were appointed, and the trustees of the internal improve fund did convey to said commissioners to aid in the construction of said canal contemplated by said internal improvement act, but none other, a large quantity of land which had been vested in said trustees by the said internal improvement act, and that the said commissioners did, pursuant to said act to aid the construction of said canal, the same having been located, as contemplated by said internal improvement act, from Lake Harney to the Indian river

and being about thirteen (13) — long, issue bonds based upon said lands so conveyed to them and it is further true that the Legislature of Florida did, in the year 1862, enact a statute, the same having been approved December 10th, 1862, entitled "An act to repeal an act to facilitate the construction of the St. John's and Indian River canal, approved January first, 1857, and for
122 other purposes," whereby said act approved January first, A. D. 1857, was repealed; and it is further true that said commissioners, in pursuance of the provisions of said statute approved December 10th, 1862 (chapter 1359, laws of Florida), did, about March 25th, 1863, reconvey to the trustees of the internal improvement fund, as required by said act, all the lands then held by such commissioners, then having disposed of but a few acres which had been conveyed to them by said trustees, and did otherwise comply with the provisions of said act approved December 10th, 1862. Defendants pray reference to all said acts of the Legislature of Florida whenever it may be necessary. By the sixth section of said act approved December 10th, 1862, it was provided as follows:

"That all lands and property of whatever kind required to be conveyed and transferred by this act to the trustees of the internal improvement fund shall be held by said trustees subject to the future action of the General Assembly."

It is also true that in 1879 the Legislature of Florida enacted a statute which was approved by the Governor March 11th of said year, it being chapter 1356 of the printed laws of Florida, which directs the trustees of the internal improvement fund to sell said lands so conveyed to them; out of the proceeds to settle and pay all lawful claims and demands existing and outstanding against said commissioners. It is further true and defendants allege that said internal improvement act provided that after the railroad companies accepting the provisions of said act should for five consecutive years pay six per cent. on their capital stock paid in and the interest on the bonded debt and apply the sum of one per cent. yearly to a sinking fund on said debt, then the trustees of the internal improve-
123 ment fund might apply, under the direction of the Legislature, the annual income arising from said fund to other purposes of internal improvement or to the support of schools so long as the companies should continue to pay the same; but it is further true and defendants allege that said railroad companies never did nor did either of them ever for five consecutive years pay six per cent. on the stock and interest on the bonded debts and the one per cent. yearly to the sinking fund.

Defendants also say that soon after the said internal improvement act, approved January sixth, 1855, became a law, several railroad corporations organized under the laws of Florida, to wit, "the Pensacola and Georgia Railroad Company," "the Tallahassee Railroad Company," "the Florida Railroad Company," "the Florida, Atlantic and Gulf Central Railroad Company," accepted the provisions of said internal improvement act and undertook the construction of different parts of the line of railroads specified in the fourth section of said act, and they did construct a large part thereof, the said

Florida Railroad Company constructing a line of railroad from Amelia Island, on the Atlantic, to Cedar Key, and the Florida, Atlantic and Gulf Central Railroad Company constructing that part of said line from the St. John's river to the waters of Pensacola Bay that lie between the said river and the town of Lake City, formerly called Alligator, and the Pensacola and Georgia Railroad Company constructing said line from Lake City on to Quincy, and the Tallahassee Railroad Company constructing an extension from Tallahassee to the St. Mark's river; that said companies issued prior to January 10th, 1861, under the provisions of said internal improvement act, a large number of mortgage bonds, as provided therein, as follows: The Florida Railroad Company issued bonds
124 to the amount of $1,616,000.00; the Florida, Atlantic and Gulf Central Railroad Company to the amount of $555,000.00; the Pensacola and Georgia Railroad Company, $1,220,000.00; all of said bonds bearing interest at the rate of seven per cent. per annum, payable semi-annually, and being coupon bonds and maturing, some as late as 1892, and none maturing earlier than 1876.

These bonds were endorsed by the trustees of said internal improvement fund with a guarantee of the payment of the interest on said bonds, pledging the lands constituting said fund for the payment of the interest as it became due, as provided in said act.

In the year 1861 there was default in the payment of the interest on said bonds, both by the railroad companies and the trustees of said fund, and from that time throughout the subsequent years until the year 1881 such default not only continued on bonds outstanding, but default was also made as to the interest accruing in the subsequent years on bonds outstanding, a large amount of interest remained unpaid till the year A. D. 1881. In the years 1869 and 1870 an immense sum had become due and payable as interest on said bonds, and the railroad companies had become hopelessly insolvent, and the net semi-annual sales from the lands of said fund were not sufficient to pay even the interest upon the interest accruing semi-annually (counting interest on matured coupons), and the internal improvement fund was then, had been, and continued for many years in an utterly insolvent condition.

Defendant, further answering, says that it is not true that all coupons of the bonds so issued have been paid, but there are still
125 outstanding bonds the interest on which is a lien on the internal improvement fund and lands.

These defendants, further answering, deny that the said Southern Inland Navigation and Improvement Company had been authorized and empowered by the laws of Florida to construct the said canal contemplated by said internal improvement act, as alleged by complainant, and while defendants are informed and believe that four of the then trustees of said internal improvement fund, to wit, Harrison Reed, Governor; Simon B. Canover, then treasurer; John S. Adams, then commissioner of immigration, and J. B. C. Drew, then attorney general, did, on or about the tenth day of February, 1871, execute and deliver the original of said Exhibit "A" to complainants' bill, pretending to convey to the said Southern

Inland Navigation and Improvement Company the lands therein described, yet these defendants allege and charge that such act or deed was done and made, and, as they believe and charge, was well known to complainants, without authority of law upon the part of said trustees and in violation of their duties under the laws of Florida, and was and ever has been null and void. Defendants have no knowledge nor have they sufficient information to enable them to form a belief as to whether any and, if any, what consideration was paid for said lands; and they charge that if any consideration was paid that such consideration was coupons of said bonds, but defendants do not admit that they were valuable coupons; they therefore deny that any valid consideration was in fact paid therefor and demand strict proof of the same. Whether or not said pretended deed has been recorded in the counties of the State as alleged in the complaint or in any of them these defendants do not know, nor have they sufficient information to enable them to say, and therefore they deny the allegation as to the same made by the complainant.

126 Further answering, defendants say that whether or not the said Southern Inland Navigation and Improvement Company made the deed of mortgage, of which Exhibit B to complainants' bill is alleged to be a copy, and whether or not the said deed of mortgage was recorded in the counties alleged or any of them, and whether or not said Southern Inland Navigation and Improvement Company made and executed the bonds or any of them, as alleged in said bill of complaint, or delivered the same or any of them of complainant as trustee as alleged; and whether or not any of said bonds were certified as alleged by complainants, and whether or not said Southern Inland Navigation and Improvement Company has sold fifty or other number of said pretended bonds, and whether or not the complainant ever sent two thousand or other number of said bonds to the city bank of London or instructed said city bank to deliver two thousand bonds to Smith, Payne, and Smith to the credit of Edward James Reed, M. P., upon the order of William H. Bennett, as alleged in said bill of complaint, and whether or not said city bank accounted for and paid to complainant the said sum of eight hundred pounds sterling or other sum, and whether or not default has been made by the said Southern Inland Navigation and Improvement Company in payment of said pretended bonds or interest or coupons thereon, these defendants have no knowledge, nor have they any information whether or not complainant has been requested in writing by Henry C. Hepburn to institute appropriate legal proceedings to enforce the rights of the holders of said pretended bonds or any of them, and whether or not the said Hepburn is the owner and holder of

127 any of said bonds, as alleged in the complainant's bill defendants have no knowledge or information. And defendants, further answering, say as to all matters as to which they have denied having any knowledge or information, or knowledge or information sufficient to form a belief that they are utter strangers thereto and cannot admit the same but call for strict proof thereof, and therefore defendants deny all and singular the allegations in said bill of com-

plaint made as to such matters and things and call for strict proof of the same.

Defendants, further answering, say that although it is true that said pretended deed of conveyance was made by said Harrison Reed and others, trustees of the internal improvement fund, in violation of their powers, rights, and duties in the premises, defendants further say that it is true, as alleged in said bill of complaint, that on or about the third day of November, 1870, Francis Vose, holder of coupons representing interest on said bonds issued by said railroad companies accepting the provisions of said internal improvement act, filed a bill of complaint in this honorable court against said Harrison Reed and others, then the trustees of said internal improvement fund, and that the said Southern Inland Navigation and Improvement Company was made a party defendant to said suit, but not, however, in November, A. D. 1871, but the said Southern Inland Navigation and Improvement Company was, on the 29th day of December, 1870, served with a subpœna to answer said bill of complaint. Defendants further say that the object and purpose of said bill was to secure the administration of the said internal improvement fund according to the principles and for the purposes of said internal improvement law, and to prevent
128 its diversion from the payment of the interest or coupons aforesaid to which it had been pledged, and among the illegal acts and doings sought to be prevented and arrested by said Vose through said bill of complaint, to which bill of complaint other coupon holders subsequently became parties complainant, was the application and conveyance of land to said Southern Inland Navigation and Improvement Company. By said bill it was also prayed that the trustees of the internal improvement fund should be enjoined and restrained from selling said lands for scrip of any kind or for aught else than the current money of the United States, and by an injunction issued to said cause by this honorable court against said trustees on the sixth day of December, A. D. 1870, they were enjoined, among other things, from selling the lands of said fund for scrip or State warrants of any kind, or for aught else than current money of the United States.

Defendants further say that on the sixth day of February, 1871, the said bill of complaint was adjudged and taken as confessed as against said Southern Inland Navigation and Improvement Company.

Defendants further say that soon after the making of said pretended deed of conveyance, the original of Exhibit A to complainant's bill, proceedings were instituted, in 1871 or early in 1872, in said suit commenced by Francis Vose, to set aside and declare null and void said deed of conveyance and all the contracts and agreements as to lands so conveyed to said Southern Inland Navigation and Improvement Company, and on the fourth day of December, 1873, it was decreed therein by this honorable court, as alleged in said bill of complaint, that the contracts and agreements
129 entered into by the trustees of the internal improvement fund with the corporation known as the Southern Inland Navigation and Improvement Company be rescinded, and the same

are hereby declared to be null and void, and the lands undertaken to be conveyed or contracted to be conveyed shall be restored to said internal improvement fund or be subject to sale by the agents appointed by this court rendered at this term in accordance with the provisions of said decree.

Defendants further say that it is true that said Southern Inland Navigation and Improvement Company was in said bill of complaint of Francis Vose and in the subpœna issued thereon described as the "Southern Inland Navigation Company," yet it is also true that on the 18th day of May, 1875, a petition was filed in this honorable court in said cause of Vose, &c., by the said Southern Inland Navigation and Improvement Company praying that the said decree of December 4th, 1873, in so far as it relates to said company, be vacated, and that such company have leave to file such pleadings in said cause of Francis Vose *vs.* said trustees as it might be advised by counsel to be necessary for the protection of its interests, and for such further order as the court might be advised by counsel to be necessary for the protection of its interests, and for such further order as the court might deem meet and reasonable; and said petition, after being amended, was answered by said Vose, and the same coming on to be heard by consent before Justice Bradley it was, on the 26th day of March, 1877, adjudged and decreed that said Southern Inland Navigation and Improvement Company was duly made a party to the bill of complaint of said Francis Vose, and was served with process of subpœna therein and failed and neg-
130 lected to appear and answer said bill of complaint, and the prayer of the petition was denied with costs, and defendant annexed hereto a copy of said petition and answer and decree. This petition, answer, & decree here spoken of will be found elsewhere in the record; and defendants further say that all said orders, judgments, and decrees and injunctions are of full force and are of record in this honorable court as to and against the claims and pretensions set up by complainant.

Defendants, further answering, say that by reason of the same the said complainant and any and all holders of any such pretended bonds of the Southern Inland Navigation and Improvement Company *and* forever barred and precluded of any and all their said claims and pretenses set up in said bill. Defendants have no knowledge nor have they any information as to whether complainants had actual notice of said orders, injunctions, decrees, and the pendency of said suit; but they claim and presume the right to show that they had such notice, should it be true that they did have and should it be necessary for them to show such to be the fact, and they further claim that the complainant shall be held to show that he had no actual notice, and they claim that the said suits, orders, decrees, and injunctions were in law notice of their contents to said complainants. Defendants further say that said lands claimed to have been conveyed to the Southern Inland Navigation and Improvement Company were, on the 29th day of December, 1873, restored to sale and placed on the market by said trustee and were ever afterwards kept regularly and openly offered for sale by said trustees, and that they and their predecessors from time to time since said day in De-

cember, 1873, sold and conveyed parts of said land to divers persons, who are now in possession of the same, and, among other
131 persons, to the Florida Land and Improvement Company, a corporation under the laws of Florida; and defendants reserve the right to show upon the hearing the different persons to whom said lands have been conveyed. The deed made by said Reed, Governor, and others to said Southern Inland Navigation and Improvement Company is now in possession of respondents, and was, as they are informed and believe, surrendered to their predecessors soon after said decree of December, 1873, was made.

The defendants, further answering, say that there is now pending in this honorable court a petition filed by William H. Gleason in a suit, in equity, pending in said court, wherein Charles P. Greenough, administrator of the estate of Francis Vose, is the complainant and these defendants are defendants, to which petition these defendants are also the defendants, — annex hereto, marked B, a copy of said petition as a part hereof to show the nature of the claim made by said Gleason, petitioner as aforesaid, and the relief sought therein; and defendants say that the said Gleason is a necessary and indispensable party in view of the claim made by him to the bill of complaint of the said The Union Trust Company of New York.

Defendants, further answering, say that complainant's claim is stale and is barred by lapse of time, and should not be enforced in the court of equity; and these defendants deny all and all manner of unlawful combination and confederacy wherewith they are with the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make
132 answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FLEMING & DANIENS,
GEO. P. RANEY,
Solicitors for Defendants.

TALLAHASSEE,
Northern District of Florida, } ss:

William D. Bloxham, William D. Barnes, Henry A. L'Engle, George P. Raney, and P. W. White, trustees of the internal improvement fund of the State of Florida, defendants in the above suit, being duly sworn, say that the above answer is true, except as to those matters stated on information and belief, and as to them they believe them to be true.

GEO. P. RANEY.
P. W. WHITE.
W. D. BLOXHAM.
W. D. BARNES.
HENRY A. L'ENGLE.

Sworn to and subscribed before me this 1st day of March, 1884.

FRED. T. MYERS,
U. S. Commissioner, Northern District of Fla.

In the United States Circuit Court, 5th Circuit, Northern District of Florida.

133 CHARLES P. GREENOUGH, Administr'r of Estate of Francis Vose,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

To the Honorable Thomas Settle, judge of said court:

Your petitioner, William H. Gleason, respectfully represents—

First. That some time during the year 1870 and in the early spring of said year your petitioner made and entered into a contract with the Southern Inland Navigation and Improvement Company, a corporation duly chartered and organized under and by virtue of the laws of Florida, by which your petitioner agreed to deposit with the trustees of the internal improvement fund of the State of Florida coupons of certain railroad bonds, the interest of which had been guaranteed by the said trustees of the internal improvement fund in payment for certain lands belonging to the said fund, which, in accordance with a contract theretofore made between the said Southern Inland Navigation and Improvement Company and the trustees, were to be sold or conveyed by the said trustees to the company.

Second. That the said Southern Inland Navigation and Improvement Company, in consideration of said coupons so to be paid and deposited by your petitioner as aforesaid, contracted and agreed to pay to your petitioner the face value of the same, with interest to the date of payment, said sum to be paid to your petitioner
134 out of the first proceeds of bonds intended to be issued by the said Southern Inland Navigation and Improvement Company upon the said lands so to be conveyed to the said company by the trustees of the internal improvement fund as aforesaid.

Third. That, in pursuance of said contract and agreement, your petitioner delivered to the board of trustees of the internal improvement fund coupons as aforesaid amounting to the sum of $56,782.50 face value, to wit, $15,966 of coupons of bonds issued by the Florida Central Railroad Company and $40,816.50 issued by the Pensacola and Georgia Railroad Company, the Florida Railroad Company, and the Tallahassee Railroad Company.

Fourth. That, in consideration of the coupons so deposited by your petitioner with the treasurer of the internal improvement fund as aforesaid, the said trustees of the internal improvement fund made, executed, and delivered to the said Southern Inland Navigation and Improvement Company a deed for —— acres of land belonging to said internal improvement fund, but that afterwards, to wit, on or about the fourth day of December, 1873, by virtue of the decree made and entered by this honorable court in the above-entitled cause, the deed made and executed by the trustees of the internal

improvement fund to the Southern Inland Navigation and Improvement Company as aforesaid was ordered to be cancelled and the said lands to be reconveyed by the said deed to be restored to the said internal improvement fund; and thereupon, by virtue of the said decree, the said deed was cancelled and the said lands restored as therein directed, and the said Southern Inland Navigation
135 and Improvement Company was thereby deprived of all advantage, use, benefit to be derived from the use and possession of the said lands.

Fifth. That, *the* in consequence of the said decree of this honorable court as aforesaid, and the cancellation of the said deed, and the restoration of the said lands to the internal improvement fund as aforesaid, the said Southern Inland Navigation and Improvement Company have been unable to pay your petitioner for the coupons advanced by him as aforesaid; that the said trustees of the internal improvement fund now have and hold the said lands, excepting such as have been sold since the decree, and also still continue to hold the coupons deposited with the treasurer of said board by your petitioner as aforesaid.

Sixth. That, in consequence of the cancellation of the said deed and the restoration of the said land to the internal improvement fund, the said Southern Inland Navigation and Improvement Company have been and are so utterly unable to pay to your petitioner the value of the said coupons which it constructed and agreed to pay out of the proceeds of bonds to be secured by the said lands as aforesaid that the said coupons belong solely to your petitioner, and the said Southern Inland Navigation and Improvement Company had no property or interest in the same, and, the consideration for which the same were deposited by your petitioner with the said trustees having entirely failed, your petitioner is entitled to a return of the same.

Wherefore your petitioner now comes and prays this honorable court to take into consideration all *the* singular the premises,
136 and to decree that the said coupons shall be restored to your petitioner by the said trustees, or that the same shall be declared a valid lien in favor of your petitioner against the said internal improvement fund for the face value of said coupons, with interest to date.

(Signed) W. H. GLEASON.

STATE OF FLORIDA, } *ss:*
County of Duval, }

Personally appeared before me William H. Gleason, who, being duly sworn, deposeth and says that he has read the foregoing complaint and knows the contents thereof, and that the same is true.

[Seal of State. In God we Trust.]

(Signed) PHILIP WALTER, *Clerk.*

EXHIBIT A.

OFFICE OF TREASURER,
TALLAHASSEE, *Sept. 10th*, 1870.

SIR: This is to certify that William H. Gleason has this day left on deposit with me forty thousand dollars in coupons of the different Florida railroads, said coupons to apply in the payment for lands purchased and to be purchased by him from the internal improvement fund for his own benefit and the Southern Inland and Navigation Company for such lands as have been granted to said company by the board of internal improvement.

(Signed) S. B. CONOVER,
Treasurer of B'd Int. Imp.

137 EXHIBIT A.

This is to certify that Hon. Wm. H. Gleason has this day deposited with me fifteen thousand nine hundred and sixty-six dollars in coupons of the Florida, Atlantic and Gulf Central R. R. Co. bonds, said coupons to apply on purchase of lands by the Southern Inland Navigation and Imp. Co. when the board of internal improvement shall have resolved to receive such coupons for public lands and when said company shall have selected and applied for such public lands as have been granted to them by the said board of internal improvement.

Tallahassee, April 9th, 1870.

(Signed) S. B. CONOVER,
Treasurer B'd Internal Improvement, State of Florida.

Received April 13th in Florida R. R. coupons, eight hundred and sixteen .50 dollars.

(Signed) S. B. CONOVER,
Treas. B'd It. Impr't.

[Endorsed:] In the circuit court of the United States for the northern district of Florida. In equity. The Union Trust Company of New York *vs.* The Southern Inland Navigation & Improvement Company and The Trustees of the Internal Improvement Fund of the State of Florida. Answer of the trustees of the I. I. F. of Fla. Filed March 3, 1884. P. Walter, clerk.

138 United States Circuit Court, Northern Dist. of Florida.

THE UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO. *et al.*

At the request of the defendant herein, The Southern Inland Navigation and Improvement Company, the time for answering the bill herein is extended to the 20th of March, 1884.

March 15, 1884.

J. B. C. DREW,
Sol. for Complainant.

[Endorsed:] U. S. circuit court, northern dist. of Fla. The Union Trust Co. *vs.* The Southern Inland Navigation & Improvement Co. Stipulation extending time to answer. Filed March 15, 1884. Philip Walter, clerk.

139 Circuit Court of the United States, Northern District of Fla.

UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY.

The answer of the Southern Inland Navigation and Improvement Company to the bill of complaint filed in the above-entitled cause.

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereto as is material or necessary for *them* to make answer to, answer and say:

First. This defendant admits that the Union Trust Company is a corporation duly created and existing under the laws of the State of New York and a citizen thereof.

Second. That this defendant is a corporation duly organized under the laws of the State of Florida and a citizen of the State of Florida.

Third. This defendant admits that the board of trustees of the internal improvement fund of the State of Florida was duly created and organized and possessed the several rights, powers, duties, and liabilities as set forth in bill of complaint.

Fourth. This defendant admits that on the 20th day of February, A. D. 1871, the said trustees duly executed and delivered
140 *the* this defendant a certain deed of lands, as set forth in said bill of complaint, a copy of which deed is annexed to said bill of complaint and marked Exhibit "A," and that the said deed was duly recorded as alleged in said bill.

Fifth. This defendant admits that on or about the 20th day of March, A. D. 1871, this defendant executed and delivered to the complainant, as trustee, its certain deed of mortgage to secure the payment of certain bonds mentioned and described in said bill of complaint, a copy of which deed of mortgage is annexed thereto and marked Exhibit "B," and that this defendant, pursuant to the terms of said mortgage, executed and delivered to complainant bonds to the amount of five million of dollars, as alleged in said bill of complaint.

Sixth. The defendant makes further answer that the said defendant company did make and enter into a contract with Willis Gaylord, of the city of New York, to complete and perfect a system of canals and inland navigation from the head of Halifax river to Key West, connecting the different inland waters by a series of canals, deepening and dredging the sounds, rivers, and lakes adja-

cent to the Atlantic coast, and to improve the navigation of the St. John's river from Lake Harney to Lake Washington, and to construct a canal from Lake Washington to Indian river; that by the terms and conditions of said contract the said Gaylord was to be paid from time to time, as the work progressed, in monies arising out of the sale of said bonds or in the bonds of said defendant company, and being the bonds which were secured by the aforesaid deed of trust or mortgage executed by the defendant company to the complainant. The said Willis Gaylord assigned said contract
141 to the American Contracting Company, with all the rights, privileges, and advantages which might have accrued to him under the conditions and provisions of said contract. The said American Contracting Company constructed a dredge-boat and improved the St. John's river from Lake Harney to Lake Washington, in conformity with the terms and conditions of the contract entered into by and between the said Willis Gaylord and defendant company. According to the terms and conditions of the aforesaid contract the said American Contracting Company were entitled for said work to seven hundred and fifty thousand dollars, and the said defendant company issued its warrants to that effect; which warrants were duly countersigned by the treasurer of the internal improvement fund of the State of Florida, in accordance with the terms and conditions of a resolution adopted and passed by the board of trustees of the internal improvement fund of the State of Florida, the said warrants being dated March 27th, A. D. 1872, and were delivered to the president of the said The American Contracting Company.

Seventh. This defendant admits that two million dollars of said bonds were certified by complainant and delivered to this defendant, as alleged in said bill of complaint—that is to say, that the said bonds were, at the request of this defendant, deposited by the complainant with the City Bank of London for the use of this defendant and the American Contracting Company; that fifty thousand dollars of said bonds were sold and the proceeds thereof applied to pay a claim of said complainant and other purposes; that seven hundred thousand dollars of said bonds were, in accordance with the contract, hereinbefore referred to, with the said Gaylord, and
142 in pursuance of the warrants drawn by this defendant, as hereinbefore recited, applied to pay the American Contracting Company for work performed by it as aforesaid.

Eighth. This defendant avers that seven hundred and fifty thousand dollars of the said bonds have been sold and delivered by this defendant and are now outstanding, and that the balance of said bonds remain in the possession or under the control of this defendant.

ED. M. CHENEY,
Solicitor for Defendant.

JACKSONVILLE, FLORIDA,
Northern District of Florida, } ss:

Personally appeared before me William H. Gleason, who, being duly sworn, says that he is the president of the Southern Inland Navigation and Improvement Company, defendant in the above suit; that he has read the above answer, and that the same is true.

W. H. GLEASON,
President S. I. N. & I. Co.

Sworn and subscribed to before me this 22d day of March, 1884.
PHILIP WALTER, *Clerk.*

[Endorsed:] In circuit court, northern district Florida. The Union Trust Company of New York *vs.* The Southern Inland Navigation and Improvement Company & others. Answer of the Southern Inland Navigation & Improvement Company. Filed Mar. 22, 1884. Philip Walter, clerk. Edward M. Cheney, attorney for defendant company.

143 United States Circuit Court, Northern Dist. of Florida.

THE UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND.

And now comes the complainant herein and, by protestation, not admitting all or any of the matters and things in the answer of the defendant, The Southern Inland Navigation and Improvement Company, herein filed to be good and sufficient in law or true in fact to be replied unto, saith that the matters and things in said answer are not true in point of fact or good and sufficient in law to meet or avoid the matters and things in complainant's bill alleged, and the relief therein prayed it will ever maintain and make good before this honorable court.

Wherefore complainant prays for the judgment and relief as in its said bill it has prayed.

J. B. C. DREW,
Solicitor for Complainant.

[Endorsed:] U. S. circuit court, northern dist. of Florida. Union Trust Co. *v.* The Southern Inland Co. *et al.* Replication to answer of Southern Inland Company. Filed Apr. 14, 1884. Philip Walter, clerk. J. B. C. Drew, sol. for compl.

144 United States Circuit Court, Northern Dist. of Florida.

THE UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLA.

And now comes the complainant herein and, by protestation, not admitting all *and* any of the matters and things in the answer of

the defendant, The Trustees of the Internal Improvement Fund of Fla., herein filed to be sufficient in law or true in fact to be replied unto, saith that the matters and things in complainant's bill alleged and the relief therein prayed it will ever maintain and make good before this honorable court.

Wherefore complainant prays for the judgment and relief as in said bill it has prayed.

J. B. C. DREW,
Sol. for Complainant.

[Endorsed:] U. S. cir. court, north'n dist. of Florida. Union Trust Co. *vs.* The Southern Inland Co. *et al.* Replication to answer of trustees, etc. Filed Apr. 14, 1884. Philip Walter, clerk. J. B. C. Drew, sol. for compl't.

145 In U. S. Circuit Court for Northern Dist. of Florida.

UNION TRUST COMPANY
vs.
SOUTHERN INLAND NAVIGATION COMPANY *et al.*

The clerk of said court will please enter our names as of counsel for complainants.

July 3rd, 1884.

C. P. AND J. C. COOPER,
Complainant's Sol's.

[Endorsed:] In U. S. circuit court, northern district of Florida. Union Trust Company *vs.* Southern Inland Navigation Company *et al.* Precipe to enter names of C. P. & J. C. Cooper, for compl'ts. Filed Jul- 5, 1884. Philip Walter, clerk. C. P. and J. C. Cooper, for compl'ts.

146 In U. S. Circuit Court for Northern Dist. of Florida.

UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND AND NAVIGATION COMPANY *et al.*

We, as solicitors of complainants and defendants, hereby consent that an order be made extending the time for three months to take testimony in the cause, and that D. U. Fletcher be appointed an examiner to take the testimony at Jacksonville, and Frederick R. Orr and Charles Nettleton, of 115 Broadway, to take testimony in New York city, in this cause, and that fifteen days' notice of taking testimony in New York be given the parties thereto.

July 23rd, 1884.

J. B. C. DREW,
C. P. AND J. C. COOPER,
Sol's for Complainants.
ED. M. CHENEY,
Sol. for Defendants.
GEO. P. RANEY,
FLEMING & DANIEL,
Sol's, Representing Trustees of I. I. Fund of Florida.

[Endorsed:] In U. S. circuit court, northern district of Florida. Union Trust Company *vs.* Southern Inland Navigation Company *et al.* Stipulation to extend time to take testimony. Filed Aug. 6, 1884. Philip Walter, clerk.

147 In U. S. Circuit Court for Northern Dist. of Florida.

UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND AND NAVIGATION COMPANY *et al.*

It is ordered that the time to take testimony in the cause be extended for three months, and that D. U. Fletcher be appointed an examiner to take said testimony in Jacksonville, Florida, and that Frederick R. Orr and Charles Nettleton, 115 and 117 Broadway, be, and are hereby, appointed as examiners to take the testimony in New York city, and fifteen days' notice be given to the parties or their solicitors of taking testimony in New York.

August 1st, 1884.

THOMAS SETTLE, *Judge.*

[Endorsed:] In U. S. circuit court, northern district of Florida. Union Trust Company *v.* Southern Inland Navigation Company *et al.* Order to extend time to take testimony. Filed Aug. 6, 1884. Philip Walter, clerk.

148 In U. S. Circuit Court, Northern District of Florida.

CHAS. P. GREENOUGH, Adm'r,
vs.
TRUSTEES INTERNAL IMP. FUND OF FLORIDA.

In Matter of the Petition of WILLIAM H. GLEASON, H. C. HEPBURN Intervening.

UNION TRUST COMPANY
vs.
SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO., TRUSTEES OF IMPROVEMENT FUND OF FLORIDA.

It is agreed by the solicitors representing the parties in above-stated suits that all testimony taken in said suits may be used as testimony in each of said suits as if taken in each, and that such portions of the record of the case of Francis Vose *vs.* Trustees I. I. Fund of Florida as refer to the matters involved in above cases and are admissible as testimony may be used and read as testimony at the hearing of said above-named causes.

ED. M. CHENEY,
Sol. for Wm. H. Gleason & S. I. N. & Imp. Co.
FLEMING & DANIEL,
Representing Trustees of I. I. F. of Florida.
W. FULLERTON,
C. P. AND J. C. COOPER,
Sol's for Union Trust Co. and H. C. Hepburn.

[Endorsed:] In U. S. cir. court, northern district of Florida. Union Trust Co. *vs.* Southern I. N. & I. Co. and Trustees of I. I. Fund. Greenough, adm'r, *vs.* Trustees I. I. Fund. Matter of Gleason petition. Agreement to use testimony in each case. Filed Dec. 24, 1885. Philip Walter, clerk.

149 In the U. S. Circuit Court, 5th Judicial Circuit, Northern District of Florida. In Chancery.

THE UNION TRUST COMPANY

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA and The Southern Inland Navigation and Improvement Company.

On application of solicitors for the Trustees of the Internal Improvement Fund of Florida, one of the defendants in the above cause, and by agreement of counsel, it is ordered that Frederick T. Myers, Esq., of Tallahassee, be, and he is hereby, appointed examiner in this cause to take the testimony of witnesses and other evidence as may be presented before him either by the complainant or defendants in the above-entitled suit and report the same to this court without delay.

January 2nd, 1885.

THOMAS SETTLE, *Judge.*

[Endorsed:] In the United States circuit court, 5th judicial circuit, northern dist. of Florida. The Union Trust Company *vs.* The Trustees of the Internal Improvement Fund of Florida *et al.* Order appointing Frederic T. Myers examiner. Filed Jan'y 2, 1885. Philip Walter, clerk.

150 In U. S. Circuit Court, Northern Dist. of Florida.

UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES INTERNAL IMPROVEMENT FUND OF FLORIDA.

The defendants and solicitors in the above cause will take notice that on Saturday, February 7th, 1885, at 10 o'clock a. m., a motion will be made before his honor Thomas Settle, at chambers, for an order to the examiner to return the testimony in this cause to speed the same, and to set down said cause for a day certain for hearing thereof.

February 6, 1885.

C. P. AND J. C. COOPER,
W. FULLERTON,
Complainant's Sol's.

[Endorsed:] In U. S. circuit court, northern district of Florida. In chancery. Union Trust Company *vs.* Southern Inland Naviga-

tion Improvement Co. and Trustees Internal Imp. Fund of Fla. Notice of motion to set case down for hearing. Service accepted Feb'y 6th, 1885. E. M. Cheney, sol. for def't. Fleming & Daniel, sol-. for trustees. C. P. & J. C. Cooper & W. Fullerton, compl't's sol's.

151 In U. S. Circuit Court, Northern Dist. of Florida.

UNION TRUST COMPANY
vs.
SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES I. I. FUND.

GREENOUGH, Adm'r of Vose, *vs.* TRUSTEES I. I. FUND.

Matter of Petition of W. H. GLEASON.

It is ordered that the examiners and masters appointed in these causes shall report all the testimony in above causes by the 30th of March, 1885, and that taking of testimony in said causes shall be limited to that day.

It is further ordered that the above causes shall be heard before the court on the 6th of April, A. D. 1885.

February 7th, 1885.

THOMAS SETTLE, *Judge.*

[Endorsed:] In circuit court, northern district of Florida. Union Trust Company *v.* Southern Inland Navigation & Imp. Co., Trustees I. I. Fund. Greenough, Adm'r, *vs.* Trustees I. I. Fund. Petition of Gleason. Order setting causes for hearing.

152 In U. S. Circuit Court, Northern Dist. of Florida.

UNION TRUST COMPANY
vs.
SOUTHERN I. NAVIGATION & I. CO. and THE TRUSTEES INTERNAL IMPROVEMENT FUND OF FLORIDA.

Upon consent of counsel for complainant and the defendants, The Trustees of the Internal Improvement Fund of Florida, it is ordered, adjudged, and decreed that Edward A. Perry, Governor; Charles M. Cooper, attorney general; William D. Barnes, comptroller; Edward S. Crill, treasurer, and Charles L. Mitchell, commissioner of lands & immigration, the present trustees of the said internal improvement fund be, and they are hereby, instituted as parties defendant to the above suit in the place and stead of the former trustees who answered the bill, and that the pleadings, testimony, and orders in this cause apply to the present trustees, hereby substituted as defendants for their predecessors in the same manner and with like effect as they applied to said former trustees while defendants in this cause.

March 21, 1885.

THOMAS SETTLE, *Judge.*

[Endorsed:] In U. S. circuit court, northern district of Florida. Union Trust Company *vs.* S. I. N. & I. Company and Trustees I. I.

Fund of Florida. Order making present trustees parties. Filed March 21st, 1885. Philip Walter, clerk.

153 In the U. S. Circuit Court for Northern Dist. of Florida. In Chancery.

UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION COMPANY and TRUSTEES OF INTERNAL IMPROVEMENT FUND OF FLA.

The defendants and their solicitors will take notice that on the 19th of September, 1884, we will take the testimony, in New York city, before Frederick R. Orr and Charles Nettleton, examiners, at 18 Exchange Place, of Henry C. Hepburn, George A. Everett, and William Fullerton and other witnesses of complainant.

Sept. 5th, 1884.

WILLIAM FULLERTON,
J. B. C. DREW,
C. P. & J. C. COOPER,
Complainant's Sol's.

154 In U. S. Circuit Court for Northern Dist. of Florida.

UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION COMPANY *et al.*

It is ordered that the time to take testimony in this cause be extended for three months, and that D. U. Fletcher be appointed an examiner to take said testimony in Jacksonville, Florida, and that Frederick R. Orr and Charles Nettleton, 115 & 117 Broadway, be, and — hereby, appointed as examiners to take the testimony in New York city, fifteen days' notice be given to the parties or their solicitors of taking testimony in New York.

August 1st, 1884.

THOMAS SETTLE, *Judge.*

I hereby certify that the foregoing is a true and correct copy of an order made and entered on the records of this office the first day of August, A. D. 1884.

Witness my hand and the seal of said United States circuit court, at Jacksonville, the fifth day of September, A. D. 1884.

JNO. J. DRIGGS,
Deputy Clerk U. S. Court.

155 U. S. District Court for the Northern District of Florida.

UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION COMPANY *et al.*

OFFICE OF WILLIAM FULLERTON, ESQ.,
18 EXCHANGE PLACE, N. Y. CITY, *September* 19, 1884.

Present: Frederick R. Orr, Esq., and Charles Nettleton, Esq., special examiners; William Fullerton, Esq., and Wheeler H. Peckham, Esq., counsel for the comp'ts; George P. Raney, Esq., for William D. Bloxham *et al.*, trustees of the internal improvement fund of the State of Florida, and Edward H. Cheney, Esq. for the Southern Inland Navigation Company.

By virtue of an order of the honorable the circuit court of the United States for the northern district of Florida appointing us examiners to take testimony in the above-entitled cause in New York city, which order is hereto annexed, we have caused William Fullerton and George A. Everett, witnesses in said cause, personally to come before us, who, having been by us duly sworn to testify the truth, the whole truth, and nothing but the truth to such questions as should be put to them in the above-entitled cause, *they* did depose and answer as follows, to wit:

156 The said WILLIAM FULLERTON, being duly sworn, and being examined on behalf of the complainants, testifies and says:

I am an attorney and counsellor at law, practicing in the city of New York; office, 18 Exchange Place, in that city, and I am one of the counsel for the complainants. Some time in November, 1882, Mr. George A. Everett, professing to act for W. H. Bennett, of London, and who exhibited to me a power of attorney to act on his behalf, consulted me in regard to some bonds of the Southern Inland Navigation and Improvement Company, of which Mr. Bennet claimed to be the owner, and exhibited to me a note of three thousand pounds sterling, purporting to have been executed by that company, or a copy of it, with a view to its collection, if possible; also the subject of selling fifty bonds, of which it was alleged Mr. William H. Bennet was the owner, if that were practicable, held as collateral security for the note of three thousand pounds. I caused a demand to be made on the president of the Southern Inland Navigation and Improvement Company for the payment of the note, which was refused, and then Mr. Everett, acting as attorney for Mr. Bennett, brought up the subject of selling the bonds. I examined his power of attorney and thought it did not cover the ground; that it didn't give him sufficient authority, and correspondence was opened directly with Mr. Bennett. Mr. Bennett then wrote to me direct, authorizing me and requesting me to sell these bonds to the best advantage I could. I put them in the hands of a broker in New York, requesting him to ascertain whether he could find a market for them, and, if so, at what price. Letters

were addressed to some prominent firms in this city, inquiring in regard to the market value of the bonds, and I
157 became satisfied from the inquiries I made and the answers that I received that there was no market for the bonds in this city, and if sold at all they must be sold at private conveyance. I then offered them for sale to Mr. Henry C. Hepburn, who purchased them for the sum of ten thousand dollars, and the bonds were delivered. I then, at Mr. Hepburn's request, requested the Union Trust Company to foreclose the mortgage, giving them notice that Mr. Hepburn was the owner of these bonds and that they were the only bonds ever issued by the company, as I understood and believed, for which the company was liable, and this foreclosure in consequence of that request commenced. The original note is not here; it was in my possession until a short time ago, when, at the request of Mr. Everett, I sent it to him. I believe that is all, unless Mr. Peckham wishes to ask me something when he comes.

By Mr. EVERETT:

Q. You have not stated the amount of the note, have you?
A. Yes, sir; three thousand pounds sterling.

By Mr. RANEY:

Q. Did you say this note was presented to you in 1872?
A. Oh, no; 1882.
Q. You say Mr. Hepburn purchased for ten thousand dollars?
A. Yes, sir.
Q. To whom did he pay the money?
A. He has not paid the money—all of it; I told Mr. Hepburn that if he would buy the bonds I would assist him in advancing the money for them.
Q. How much has he paid?
A. He has not paid any directly on that claim—that is, he
158 has not paid it to me, but I have paid it for him.
Q. How much have you paid for him?
A. I don't know. I have not made up the account. I cannot tell. I advanced, from time to time, for Mr. Bennett to Mr. Everett considerable sums. There has been no settlement of matters between Mr. Bennet and myself.
Q. Have you kept an account of what you have advanced?
A. Yes; such an account as a lawyer generally keeps—my check book.
Q. You say three amounts were paid to Mr. Everett?
A. Yes, sir.
Q. Would you be willing to furnish an account of the amount and dates of these advances?
A. I would not.
Q. That is all.

By the witness, continuing: For the reason, I will state, that I have reported to my principal, Mr. Bennett, what I have done, and

he is entirely satisfied with the manner in which this sale has been effected and the arrangements made for the payment of it; beyond that I don't think the transaction is the subject of inquiry. I have had a large number of transactions with Mr. Bennett, other than these, somewhat mixed up and complicated, and I don't see fit to go into an explanation.

By Mr. CHENEY:

Q. In whose possession are those bonds now?

A. A part of them are in the possession of Mr. Hepburn; the balance of them, with the exception of one, I think, are in my possession.

Q. How many are in Mr. Hepburn's possession?

159 A. I think ten.

Q. Ten of the bonds?

A. Ten of the bonds. He placed the bonds with me after he purchased them, and then concluded to withdraw ten, which I gave him, of course.

Q. Has Mr. Bennett any interest, direct or indirect, in the result of this foreclosure proceeding?

A. I don't understand that he has the slightest.

Q. Do you know positively whether he has or not?

A. I don't know positively. I know that this sale of bonds was made in good faith for the purpose of transferring the title to Mr. Hepburn, and that it was transferred, as I understand it, to him absolutely, and I am authorized by Mr. Bennett to say that he so regards it.

Q. Did I understand you to say that the object of the sale was to transfer the title to Mr. Hepburn?

A. Yes, sir; inasmuch as there was a default in the payment of the money.

Q. That is all.

The stenographer being requested to read the testimony of this witness did so as above.

By the witness: I wish to make a correction. I had forgotten the fact that fifteen of these bonds were deposited with the Union Trust Company at their request at the time this action was brought, the president, through Mr. Peckham, his counsel, saying that he thought it was advisable for it to have the possession, and those bonds are with the company still. As I understand, there is no other bond to be accounted for; that is in the possession of F. W. Brooks,

160 who took it for the purpose of ascertaining the market value; that I can get the possession of at any time I wish it; it would have been in my possession before this, except that I have neglected to ask for it.

At this point Mr. Peckham appeared, and the stenographer being requested to read the testimony for his benefit did so as above.

By Mr. PECKHAM:

Q. The fifteen bonds in the possession of the Union Trust Company were put in its possession simply as trustees without any transaction between you and the trust company with respect to the bonds other than simply leaving them for collection in the foreclosure suit?

A. That is all. The trust company is the mere depositor of those fifteen bonds at their request, inasmuch as the foreclosure was carried on in its name.

WILLIAM FULLERTON.

Subscribed and sworn to before me on this 20 day of Sept., A. D. 1884.

FREDERICK R. ORR &
CHARLES NETTLETON,
Examiners.

The said GEORGE A. EVERETT, being duly sworn and being examined on behalf of the complainants, testifies and says:

Direct examination by Mr. FULLERTON:

Q. What relation have you sustained to William H. Bennett the last few years?

A. That of his attorney-in-fact.

Q. What did you do, if anything, with these fifty bonds of the Southern Inland Navigation and Improvement Company which have been the subject of inquiry?

A. Nothing.

161 Q. You recollect of my examining your power of attorney with reference to your power to sell them, acting for Mr. Bennett?

A. I do.

Q. Do you recollect my correspondence directly with Mr. Bennett in regard to the same?

A. I do.

Q. Do you know Mr. Gleason, the president of the Southern Inland Navigation and Improvement Company?

A. I do.

Q. How long have you been acquainted with him?

A. I first met him about seven years ago.

Q. And have had an acquaintance with him ever since?

A. I have been intimately acquainted with him for the past two years.

Q. Is he acting president of that company yet?

A. He is.

Q. What have you heard him say, if anything, in regard to the number of the bonds that were outstanding issued by that company?

Objected to by Mr. Cheney as hearsay.

A. He has repeatedly and constantly informed me that those bonds were all the bonds that this company had ever issued. He has also repeatedly told me that because of private contracts between his company and the board of trustees of the internal improvement funds were he to issue any bonds outside of the fifty it would be a State's prison offense and cause him to spend the remainder of his life in the penitentiary.

Q. What occasion had he to say this to you?

162 A. It was said in connection with a reported claim of Sir Edward James Reed, of London, in which it was stated Reed would claim that he was the possessor of over three hundred of these bonds. Gleason stated that it was impossible that he or any other person could be the owner of any bonds save these fifty, for the reason before given.

Q. By the fifty bonds that you have spoken of do you refer to the fifty that were in the hands of Mr. William H. Bennett?

A. I do.

Q. And by him sold to Mr. Hepburn?

A. I do.

Q. When was this conversation held which you have last related?

A. About January, 1883, at the St. Denis Hotel, in the city of New York, in the presence of J. B. C. Drew.

Q. You may state whether he repeated the substance of what he then said at any other time.

A. Very many.

Q. What did he say about the integrity of the claim of Mr. Bennett to these fifty bonds at the time?

A. He said it was a just claim; that Mr. Bennett held them for value, and that he was the only person who held any bonds of the company for value. Moreover, the fact of my coming to this country from London was because various letters were written by Mr. Gleason to Mr. Bennett, of London, in which Gleason stated that these bonds were the only bonds held *bona fide*, and that they were good and valid as against the State.

Q. I believe that is all.

By Mr. RANEY:

Q. Where do you reside?

163 A. 339 East 79th street.

Q. Where did you reside on the sixth of August, 1884; at the same place?

A. The same place.

Q. You have related—you have stated, as I recollect; if I don't repeat it correctly I ask to be corrected—you said that Mr. Gleason said that on account of private contracts exisiting between his company and the board of trustees of the internal improvement fund were he to issue any bonds it would be a State's prison offense and cause him to spend the remainder of his life in the penitentiary. Will you be so kind as to state whether or not Mr. Gleason told you what these private contracts were?

A. Yes, sir; he did.

Q. Please do so in full.

A. As fully as I can remember, he stated to me that when the trustees deeded these lands to him and allowed the deeds to be recorded that he was obliged to enter into a private contract with the trustees undertaking not to dispose of the bonds, save as certain works progressed; that, finding himself unable to raise money on the lands thus deeded, the trustees further consented to allow him to make a deed of trust to the Union Trust Company and to issue bonds or cause the Union Trust Company to do so to be secured by such deed of trust, and that when the trustees gave him this permission they again bound him by private contract not to issue or dispose of any of these bonds, save as the work progressed; that sufficient work had been done by constructing a dredger and making certain drains which justified him in issuing fifty bonds
164 which he had placed with Mr. Bennett as collateral; that the work had not been done which would justify him in issuing any other bonds, and that if he were to do so it would be a criminal offense, as before stated.

Q. That is all, is it?

A. Yes, sir.

Q. I understood you to refer to the deed from the trustees to the Southern Inland Navigation and Improvement Company?

A. Yes, sir.

Q. When you spoke of Mr. J. B. C. Drew I suppose you meant the same party who is a counsel in this case?

A. Yes, sir.

Q. I have no further questions.

By Mr. CHENEY: I have none.

Adjourned.

GEO. A. EVERETT.

Subscribed and sworn to before us on this 20th day of September, 1884.

FREDERICK R. ORR,
CHARLES NETTLETON,
Examiners.

[Endorsed:] Testimony taken in New York.

165 In the Circuit Court of the U. S., 5th Circuit, Northern District of Florida.

UNION TRUST COMPANY OF NEW YORK
vs.
THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLA.

To the Honorable Thomas Settle, judge of said court:

Having been appointed examiner to take the testimony offered by the parties in said cause, I have done so, and the same is hereto attached and made a part of this my report.

Respectfully submitted this 30th day of March, A. D. 1885.
D. U. FLETCHER, *Examiner.*

In the U. S. Circuit Court, Northern Dist of Fla.

UNION TRUST COMPANY OF NEW YORK

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF STATE OF FLORIDA.

W. H. BENNETT, a witness on behalf of complainant herein, being duly cautioned and sworn to tell the whole truth and being
166 carefully examined this 6th day of August, A. D. 1884—present, E. M. Cheney, Esq., attorney for the said Southern Inland Navigation and Improvement Company, and Messrs. Fleming and Daniel and Attorney General Geo. P. Raney, attorneys for the said trustees of the internal improvement fund of the State of Florida, and Messrs. C. P. and J. C. Cooper, attorneys for the complainant—deposes and says as follows, to wit:

Q. State your name, age, residence, and occupation.

A. My name is William Henry Bennett; age, 56 years; residence, London, England; occupation, a solicitor.

Q. How long have you been a solicitor, and were you engaged as such in practice in 1875 and 1876; if so, where?

A. I have been a solicitor in practice over twenty-five years. I was in practice in 1875 and 1876 in London, England.

Q. Have you read the bill in this cause, and do you know of the bonds and their character and by whom made, upon which this suit is based?

A. I have read the bill in this cause and do know the bonds and their character and by whom they were made, viz., the Southern Inland Navigation and Improvement Company, and I believe they are made to bearer.

Q. Did you know W. H. Gleason, the president of this Southern Inland Navigation and Improvement Company, in 1875 and 1876; if so, when did you meet him?

A. I did know him. He was introduced to me at my office, in London, between 1875 and 1876.

Q. State what connection, if any, you had at this time with
167 the bonds served upon in this case, and if they came into your hands, and how.

A. I was then acting as solicitor for General Roddy.

The witness was interrupted here by the attorney for the Southern Inland Navigation and Improvement Company, E. M. Cheney, Esq., who objected to the testimony on the ground that the witness could not be allowed to state facts which came to his knowledge as solicitor, such communication being privileged. Subject to this objection the taking of testimony was proceeded with and witness continued:

I was introduced by him to Judge Fry and Mr. Sherwin, who, I was told, was acting under power of attorney for the Southern Inland Navigation and Improvement Company, and I was asked to prepare the necessary documents by which an arrangement for placing the bonds of that company could be carried out. Documents were shown to me by Fry to prove the title of the company to the bonds in question, and after perusing them and consulting an American barrister residing in London on the point I prepared the necessary agreement, which was between the Southern Inland Navigation and Improvement Company, by W. H. Gleason, its president, and Messrs. Roddy, Fry, and Eveliju. The purport of the agreement was for placing the said bonds. Such agreement was duly signed and exchanged between the parties. At the same time Gleason applied to me personally to make a loan to him for his company, viz., the Southern Inland Navigation and Improvement Company, of three thousand pounds as a temporary advance, offering as security a promissory note of the said company and the deposit of fifty of the first-mortgage bonds issued by the company, which bonds he informed me were deposited
168 in the name of the Union Trust Company of New York with the City Bank of London, and, on enquiry, I ascertained that such was the fact. Having been advised that the title was good and satisfactory, I made the loan—three thousand pounds or fifteen thousand dollars. I did not at that time take the bonds away from the bank. Messrs. Roddy, Fry, and Eveliju were unable to place the bonds, and, about eighteen months after the date of said agreement, Gleason gave notice, under the power reserved to him for that purpose, to cancel the agreement, and subsequently he entered into a new agreement in behalf of said defendant company with Edward James Reed, by which (Reed) he undertook——

Attorney for said Southern Inland Navigation and Improvement Company objects to testimony as, being oral testimony, *as* to contents of written agreement.

Witness proceeded: Upon the performance of certain conditions by the defendant company, to make advances to a considerable amount to the said company and place its bonds. Such agreement was subsequently ratified by the company at a special meeting, and duplicates exchanged between the parties—the company and Reed. At the request of Gleason I called at the City Bank, with Sherwin, in 1878 — paid the amount of the said bank's claim against these bonds from the bank. I examined the bonds, with Sherwin, at the bank and found there were two thousand bonds. I then packed them up again in the brown paper cover and we drove with them, in Mr. Sherwin's private carriage, to the banking house of Messrs. Smith, Paine and Smith, London, and I deposited such bonds there in the name of Edward James Reed. Reed subsequently delivered to me the fifty bonds which belonged to me.

Q. At the time you made the loan to Gleason, in 1875 or
169 1876, did you make enquiry and were the entire two thousand bonds of defendant company then in the City Bank of London deposited in the name of the Union Trust Company?

A. I did make enquiry, and I found that the entire two thousand bonds were then at the City Bank, deposited in the name of the Union Trust Company.

Q. At this time did you enquire of Mr. Gleason as to whether these bonds were free and unencumbered and still the property of the defendant company? And state his answer.

A. I did make such enquiry of Mr. Gleason, and he informed — that all the bonds were free from any charge or encumbrance and could be dealt with by the said defendant company—the entire two thousand bonds.

Q. At the time in 1878 you went with Mr. Sherwin at the request of Mr. Gleason to take these bonds from the City Bank, and when you transferred them to the bank of said Smith, Paine and Smith, did you count these bonds? Were the entire two thousand bonds up to that time deposited in the name of the Union Trust Company?

A. I did count the bonds. The entire two thousand (2,000) were there, and I was informed were in the name of the Union Trust Company of New York.

Q. After the deposit of these bonds in the name of Sir Edward J. Reed did you have any communication with him and with Mr. Gleason about these bonds? And state whether or not the balance of nineteen hundred and fifty (1,950) bonds were spoken of by them to you as being still in the hands of Sir Edward J. Reed, and up to what time.

Question objected to by attorney for the defendant company on the ground that it calls for hearsay testimony.

170 A. I had frequent interviews with Reed up to the middle of 1883, and the subject of these bonds was discussed, and he always spoke of them as his having the entire control of them all, except these he had given to me. Before the agreement with Reed was signed I made enquiry from Sherwin and Roddy on behalf of Reed whether there was any encumbrance on these bonds. Sherwin was the attorney for the defendant company and Roddy was the attorney appointed by Sherwin. I was assured by them that there was no encumbrance on these bonds. I also, in 1883, saw Gleason, who was in London, and I understood he was still the president of the said defendant company. The subject of these bonds in Reed's hands was discussed, and he spoke of them as if the whole of the balance, nineteen hundred and fifty, were in Reed's hands.

Q. Are the fifty bonds mentioned in complainant's bill the same fifty bonds delivered to you by Reed, and are they part of the two thousand bonds, nineteen — fifty of which you testify as having been turned over to Reed?

A. They are the same bonds.

Q. State for what reason and upon what authority Reed delivered to you the fifty bonds claimed by you.

A. He delivered the bonds to me because I was entitled to them in respect to the loan I had made to Gleason for his company, Reed having given me a letter at the time I deposited the bonds at Messrs. Smith, Paine and Smith, admitting that he held fifty of these bonds

for me and subject to my order, and would deliver them when required. He was aware of the arrangement and loan between Gleason's company and myself.

171 Q. State what disposition you made of the bonds and who is the present owner of them.

A. I sent the bonds over to New York, and they have been sold to Mr. Hepburn, who is the present owner.

Q. State whether you were aware at the time you made the loan and took the bonds of any proceedings, decrees, or orders to vacate and annul the title in the defendant company to the lands upon which the mortgage to the Union Trust Company was made to secure the payments of these bonds or whether you made examination and believed the title good.

A. I was not aware of any such proceedings or orders. Before making the loan I obtained counsel's opinion, and was advised the title was perfect in the defendant company and the Union Trust Company.

Q. State whether it was agreed between defendant company and yourself at the time of the making of this loan that unless it was paid within twelve months that you should then and thereafter have the power to sell the fifty bonds to reimburse yourself for the amount loaned and whether you made the sale to the present owner for that purpose.

A. It was agreed at the time I made the loan that I should have the right to sell the bonds to reimburse myself if default was made in payment within twelve months, and I did sell the present bonds for that purpose.

Direct-examination rests for this witness.

The above testimony was taken subject to the following objections thereto made upon the part of the Trustees of the Internal Improvement Fund of Florida, defendants:

172 First. The said trustees object to such parts of said testimony as relates to and gives the effect or purport of any written instrument or document on the ground that said instruments or documents are themselves the best evidence of their contents, effect, and purport, and no proper basis has been laid for the introduction of parol testimony as to the same; the same objections made by trustees of internal improvement fund to witness' testimony in cross-examination by the Southern Inland Navigation and Improvement Company as to the promissory note, of which a copy is filed, marked Exhibit "A."

Witness, being cross-examined by E. M. CHENEY, Esq., attorney for defendant company, said:

Q. You have stated in your testimony that two thousand bonds of defendant company were deposited in the City Bank of London to the credit of the Union Trust Company of New York. When you called with Mr. Sherwin and got those bonds did you have an order from the Union Trust Company?

A. I did not have any order from the said Union Trust Company.

Q. Upon whose order or by whose authority were the bonds delivered to you?

A. Upon the order and authority of W. H. Gleason, the president of the defendant company.

Q. In what capacity and on whose behalf were you acting when you received these bonds from the City Bank?

A. I was acting as agent for Edward James Reed.

Q. Were you not also acting as solicitor and agent for Roddy or Gleason or either of them?

A. I was the general solicitor for Roddy. I was not acting for W. H. Gleason.

Q. Do you know whether or not at this time the Union
173 Trust Company controlled these bonds or whether they were under control of the defendant company?

A. I do not know.

Q. State whether or not your knowledge of these bonds was not obtained and your testimony in relation to them as to all matters except as to your own loan and the 50 bonds connected with that loan was not derived by and through your relation to some or all of the parties as a solicitor, and is not your testimony based upon knowledge so derived.

Question objected to by complainant's counsel, C. P. and J. C. Cooper, as being an improper cross, and because any matter coming to the knowledge of a solicitor may be testified to by him as he chooses or not, and because the witness never was a solicitor of either or any of the defendants who may here object.

A. I obtained my information from Gleason, Fry, and Sherwin. I was not solicitor for either one of these parties. The question being sufficiently answered under advice of counsel, I refuse to answer further.

Q. Whom were you solicitor for?

A. General Roddy.

Q. Was General Roddy interested in these transactions?

A. He was.

Q. Did you obtain your knowledge of the facts you have testified to except as to your own loan and sale of the fifty bonds connected with that loan while acting as General Roddy's solicitor and in consequence of that relation?

Question objected to by complainant's solicitors, C. P. and J. C. Cooper, as being immaterial, Roddy not being a party to the suit and there being no legal prohibition to witness' testi-
174 fying.

A. I obtained the information while General Roddy was my client, and it was partly to satisfy myself in regard to my own loan and partly as solicitor for Roddy.

Q. Did you ever make any other loan to the said defendant company except the one to which you have testified?

Objected to by solicitors for complainant as being an improper cross.

Q. Witness handed papers purporting to be a copy of the note received by him at the time of the loan and asked if that is the copy of said note.

Objected to by complainant's solicitors as immaterial.

A. To the best of my belief it is a copy, except that it wants the endorsement. The original is endorsed by Gleason, Copy filed—marked Exhibit "A."

Q. Were these bonds ever deposited at the banking house of Norton, Rose & Co., as stated in the note?

A. I don't know.

Q. Did you ever apply to the banking house of Norton, Rose & Co. for the bonds?

A. I did not.

Q. When the fifty bonds were delivered to you by Reed were they delivered to you in payment of this note?

A. They were delivered to me in pursuance of an undertaking given by him to me to do so.

Q. What was the consideration for this undertaking?

A. The carrying out of the previous agreement made between Gleason and myself when the loan was made, as heretofore testified by me.

175 Q. Do you mean the fifty bonds delivered to you by Reed was in compliance with the contract to deliver fifty bonds as expressed in the note marked Exhibit "A?"

A. The order to the City Bank to deliver the bonds from Gleason was to deliver them to me personally. Moreover, the arrangement with Gleason — I was entitled to keep fifty myself, and before I deposited them at Messrs. Smith & Co.'s, bankers, Reed had promised to give me the undertaking I have referred to; otherwise I should have kept the fifty bonds and deposited only the balance.

Q. What was the consideration there for these fifty bonds?

A. The loan of three thousand (3,000) pounds, referred to in the note.

Q. Did you take the fifty bonds in payment of that loan of 3,000 pounds?

A. No; I did not.

Q. Upon what consideration and for what purpose did you take the fifty bonds?

A. I took them as security for the loan of three thousand pounds. When Mr. Gleason asked me to make the loan he offered to give me the promissory note of the company in the form, as far as I remember, of the copy, but in evidence marked Exhibit "A," and the deposit of fifty bonds, and I took the bonds under agreement.

Q. Did you sell these bonds to the present nominal holder?

A. I sold them to Mr. Hepburn.

Q. How much did you receive for them?

A. Ten thousand dollars.

Q. Did you receive this in cash?

A. The transaction took place through my agent, and I
176 believe he received the cash.

Q. Did you ever receive the cash?

A. I did not.

Q. Who was your agent in the matter?

A. Judge Fullerton.

Q. When was the sale made?

A. In 1882, I believe.

Q. Have you had a settlement with Judge Fullerton since then?

Question objected to as being immaterial.

A. I object to answer the question on the ground of its being a private affair.

Q. Do you know of your own knowledge whether or not Mr. Hepburn ever paid any consideration for these bonds?

Question objected to by complainant's counsel as being immaterial.

A. I do not know of my own knowledge that the money was paid, but I was informed that it had been paid.

Q. By whom were you informed?

A. I was informed by Mr. Everett.

Q. Who was Mr. Everett?

A. Mr. Everett was the gentleman to whom I delivered the bonds to take over to New York.

Q. Did Mr. Everett inform you in what way they had been paid for and to whom the payment was made?

Objected to by complainant's counsel as being immaterial.

A. He informed me that Mr. Hepburn had paid the money to Mr. Fullerton, but did not say in what manner it was paid.

Q. Have you any interest, direct or indirect, in this suit?

A. I have no interest, direct or indirect, in this suit.

177 The defendant, The Southern Inland Navigation and Improvement Company, closed.

Question by the trustees of the internal improvement fund:

Cross-examination:

Q. Mr. Bennett, please state how long since you practiced law in London.

A. I practiced law in London in December, 1883; I still have an office there and am practicing law there now.

Q. Where is that office?

A. 15 Red Lion square.

Q. How long have you occupied that office?

A. Since the beginning of this year.

Q. Prior to 1883 where was your office?

A. 14 Red Lion square.

Q. At the time you were having these transactions with Gleason and others testified to where was your office?

A. At 14 Red Lion square.

Q. You have spoken of Gen. Roddy & Fry and Sherwin. Can you give their other names?

A. Philip Dale Roddy, to the best of my belief. Fry's name is John; we always knew him as Judge Fry; he was promoter of Florida canal enterprises. Sherwin's name was Frank R. Sherwin.

Q. Please state whether or not you are the Bennett referred to in the bill of complaint in this case.

A. I am.

Q. Witness' attention called to the bill of complaint, and he is asked whether or not the claim of the City Bank of London against the two thousand bonds which he has heretofore said he paid to the bank was the eight hundred pounds sterling spoken of in
178 the bill of complaint as the commission of the Union Trust Company of New York as trustee.

A. It was.

Q. State whether or not this payment was a part of the three thousand pounds loaned the defendant company and covered by the promissory note, of which a copy is filed in evidence, marked Exhibit "A."

A. It was.

Q. Do you remember when Mr. Reed delivered you the fifty bonds testified about?

A. It was in the year 1882.

Q. How long after that did you send them to this country?

A. Almost immediately afterwards.

Q. When were they sold to Hepburn?

A. I can't say exactly what date, but it was shortly before the filing of the bill of complaint in this case.

Q. Please state where this Mr. Everett you have spoken of lives, and give his name.

A. His name is George A. Everett; he lives at 339 East 79th street, New York.

Q. Please state whether or not Mr. Fullerton has ever notified you of the receipt of his purchase-money of these bonds.

Objected to by counsel for the complainant as being immaterial.

A. Mr. Fullerton informed me that I might consider statements made by Mr. Everett to me in regard to this matter as being correct and as coming from him, and Mr. Everett said to me the said bonds had been sold to Hepburn and paid for.

Q. Please state when you got the two thousand bonds from the City Bank.

A. In the early part of 1878.

Defendant trustees I. I. fund *claim.*

179 On redirect examination witness said:

Q. State when you went to get these bonds from the City Bank in 1878 in whose interest as to the fifty pledged bonds did you go to get the same.

A. I went in my own interest.

Q. You stated that the fifty bonds given you as collateral by the defendant company when you made this loan were there in the City Bank of London and gotten by you from there, while in the copy note, Exhibit "A," reference is made to the bonds as deposited in the bank of Norton, Rose & Co. Will you state how that is, and whether the bonds taken from the City Bank were the same intended to be referred to in your agreement with Mr. Gleason and the original note of defendant company given you?

A. Mr. Gleason informed me that he had intended to deposit them, the bonds, at Messrs. Norton, Rose & Co., but some difficulty was made about taking them at that house, and he therefore deposited the bonds at the City Bank. He also informed me that he brought over with him from America several promissory notes for different amounts, but similar in all other respects to the promissory note he had given to me, and such promissory — had been stamped with the stamp of the company. The notes were drawn up in America when it was supposed that the bonds would be deposited with Messrs. Norton, Rose & Co., and having the stamp of the company on them it was not thought desirable to alter them by inserting the name of the bank when they were deposited. Mr. Gleason informed me that the bonds at the City Bank were the same bonds as those which he had intended to deposit with Messrs. Norton, Rose & Co., which bonds I found were in the City
180 Bank in making enquiry there.

Testimony closed.

W. H. BENNETT.

Sworn to and subscribed before me this 6th day of August, A. D. 1884.

D. U. FLETCHER, *Examiner.*

Copy of Bond.

"JACKSONVILLE, FLORIDA,
"UNITED STATES, *May* 12, *A. D.* 1877.

"One year after date, for value received, the Southern Inland Navigation and Improvement Company of the State of Florida, one of the United States of America, will pay to their own order the sum of three thousand pounds, with interest thereon at the rate of six per cent. per annum, and payable, principal and interest, in English sterling at the banking house of Morton, Rose & Co., Bartholomew Lane, London, having deposited with the said banking house as collateral security for the payment of this note and the interest thereon fifty first-mortgage land-grant bonds, each of the sum of one thousand dollars or two hundred pounds sterling, issued by the said Southern Inland Navigation and Improvement Company, giving to the said banking house full power to surrender the said bonds to the holder of this note in case of its non-payment at the time it becomes due, and the holder of said note, upon the
181 surrender of the bonds to him, is hereby invested with full authority to sue the same *if* public or private sale, and apply

the proceeds arising therefrom to pay the note, principal and interest, then due, and place the surplus, if any, with Morton, Rose & Co. aforesaid to the credit of the said company.

"Jacksonville, Florida, December 23rd, 1884.

"(Signed) W. H. GLEASON,

"*Pres. of the Southern Inland Navigation*
"*and Improvement Company.*"

UNION TRUST COMPANY OF NEW YORK

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and the Trustees of the Internal Improvement Fund of State of Florida.

W. H. GLEASON, a witness on behalf of the trustees of the internal improvement fund of the State of Florida, being duly sworn this 23rd day of December, A. D. 1884, there being present Hon. Geo. P. Raney, Messrs. Fleming and Daniel, Hon. E. M. Cheney, and Messrs. C. P. and J. C. Cooper, attorneys, testified as follows:

I know the parties to this suit, except Mr. Hepburn, named in the bill of complaint as the holder of the bonds. I was originally one of the directors of the Southern Inland Navigation and Improvement Company and afterwards the president of said company. I am such president now.

182 The witness is handed a book entitled "Record Southern Inland Navigation and Improvement Company" and asked whether or not such book is the book of minutes of proceedings of stockholders and directors of said company.

Witness answered: "It is."

The said book was offered in evidence with the understanding that the contents thereof shall be read in evidence by either party hereto on the hearing, subject to objections as to relevancy.

Q. Referring particularly to the entry of April 3rd, 1875, commencing on page 62 and ending on page 65, please state whether or not you made any trip to Europe to act under the power therein contained or therein referred to; and, if so, when.

A. I went to Europe in the month of September, 1875, and returned the last of May, 1876, leaving there on the 15th of said month, under that authority. I had not made any previous trip under the same or any other authority of the company.

Witness' attention called to a report of the directors and stockholders of the company made by him and set out in the minutes of January 6th, 1877, commencing on page 66 and ending on page 69, which was read to him, and witness is asked if he has the receipt from W. H. Bennett, a copy of which is set out in said report. He answers that he has, and is then asked to produce it, and does so, and the same is filed in evidence and marked Exhibit "C."

Witness continued: These bonds had been sent by the Union Trust Company to the City Bank of London in 1872, being then subject to the order of the Southern Inland Navigation and Improve-
183 ment Company, subject to the charges of the Union Trust Company, which was eight hundred pounds. When I made the loan from Mr. Bennett I left in his possession the eight hundred pounds for the purpose of paying the Union Trust Company. Here is a memorandum dated May 12th, 1876, which reads as follows: That the sum of four hundred pounds has been paid by Mr. Bennett to Mr. W. H. Gleason as president of the Southern Inland Navigation and Improvement Company, and that there is a further sum of seventeen hundred pounds to be paid to Messrs. McCullock & Company for him, as arranged, of which eight hundred pounds is to be paid to the city bank. This is signed W. H. Bennett.

This paper is filed in evidence and marked Exhibit "D."

Witness' attention called to the proceedings of February 15th, 1872, commencing on page 47, and witness asked whether or not the bonds were sent to Europe under that resolution. He answered they were.

Witness said: The eight hundred pounds were to be paid the Union Trust Company for their services as trustees under the deed of trust. When I got to Europe I found that no sale had been made of the bonds.

Witness, being cross-examined by attorney for Southern Inland Navigation and Improvement Company, said:

General Roddy was acting as agent for the Southern Inland Navigation and Improvement Company in conjunction with John H. Fry in making the negotiation with Mr. Bennett. When the bonds were delivered by the city bank, in 1878, to Sir Edward J. Reed they were delivered on my order as president of the Southern In-
land Navigation and Improvement Company. Up to that
184 date, the date of said delivery, the bonds were under the control of the Southern Inland Navigation and Improvement Company.

Witness, being cross-examined by C. P. and J. C. COOPER, representing complainants, said:

Q. You have stated in your direct testimony that you were and are *its* president of the defendant, Southern Inland Navigation and Improvement Company. What lands did said company have a contract for from trustees of the internal improvement fund of Florida besides those deeded to it?

A. All of the lands under the control of the board of trustees of the internal improvement fund in townships 41, 42, 43, 44, 45, 46, 47, 48, and 49, ranges 41, 42, and 43.

Q. Have you the original deed to the defendant, Southern Inland Navigation and Improvement Company, of lands so conveyed? If you have please produce it.

Witness produces deed, which is offered in evidence and filed as Exhibit "E."

Q. What deed was it that said defendant, Trustees Internal Improvement Fund of Florida, obtained and voted to cancel—was it the original?

A. I suppose it was a duplicate of the original. I know of no cancellation but what I have seen in the report published by the board of trustees of the internal improvement fund.

Q. Have you the records of the Southern Inland Navigation and Improvement Company; if so, do they contain that part of same which shows their route of work and contracts and petition for lands from the trustees of the internal improvement fund of Florida?

A. It does, and they are in full.

Q. Were the fifty bonds of the Southern Inland Navigation
185 and Improvement Company which were turned over to W. H. Bennett so turned over for money loaned the company?

A. They were turned over to him by Sir Edward J. Reed, as I understand, in full payment of the note which was given for the purpose of taking a previous note which has been executed to W. H. Bennett on the 13th day of May, 1876, and which original note is copied in the minutes of the company and a copy of the subsequent note is filed herein, marked Exhibit "A." The said first note was given for borrowed money from W. H. Bennett, as appears in my report made in January, 1877, and set out in the minutes of January 6th, 1877. The contracts referred to in answer to the first question by Messrs. C. P. and J. C. Cooper appear in the form of resolutions in the records of the board of trustees of the internal improvement fund.

Witness being questioned in the recross of the Southern Inland Navigation and Improvement Company by E. M. Cheney, Esq., said:

Q. Has the defendant, Southern Inland Navigation and Improvement Company, any lands or other property, or does it claim any lands besides these included in the deed for the trustees of the internal improvement fund, dated 10th day of February, 1871, and on file in this case as Exhibit "E?"

A. The Southern Inland Navigation and Improvement Company claims no other lands. It has the rights and franchises of the company besides the work it has already done on the St. John's river. The company has improved and made navigable from Lake Harney to Lake Washington, a distance of about 175 miles, the
186 St. John's river; steamers are running over the lines made by the company from Lake Harney to Lake Poinset.

The above question and answer made subject to the following objections on the part of the trustees of the internal improvement fund:

They are not within the line of the direct testimony.

W. H. GLEASON.

Sworn to and subscribed before me this 23rd day of December, A. D. 1884.

D. U. FLETCHER, *Examiner.*

The time for taking testimony extended in this case and the Gleason petition till January 12th, 1885, by consent.

D. U. FLETCHER, *Examiner.*

187 EXHIBIT "C."

LONDON, ENGLAND, *May* 13, 1876.

Received of W. H. Gleason, Esq., president of the Southern Inland Navigation and Improvement Company, six hundred pounds, in full for interest and guarantee of the company's note, 3,000 pounds, made payable to the order of William H. Bennett and bearing even date herewith.

May, 1876.

W. H. BENNETT.

188 EXHIBIT "D." Filed in evidence 23 Dec., 1884. D. U. Fletcher, examiner.

MAY 12, 1876.

MEMORANDUM.—That the sum of four hundred pounds has been paid by Mr. W. H. Bennett to Mr. W. H. Gleeson, as president of the Southern Inland Navigation Company, and that this is a further sum of seventeen hundred pounds to be paid to Messrs. McCulloch & Co. for him as arranged, of which eight hundred pounds is to be paid to the City Bank.

W. H. BENNETT.

189 THE UNION TRUST COMPANY OF NEW YORK

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLA.

JACKSONVILLE, FLORIDA, *January 20th*, 1885.

W. H. BENNETT, Esq., a witness on the part of the complainant in said cause, being first cautioned and sworn—there being present Messrs. C. P. and J. C. Cooper, attorneys for complainant, and Messrs. E. M. Cheney, attorney for defendant, Southern Inland Navigation and Improvement Co., and Fleming and Daniel, attorneys for defendant, Trustees I. I. fund of Florida—testified as follows:

I am the same W. H. Bennett who has heretofore testified in this case.

Q. Certificate- marked "F," "G," "H," Exhibit "I," Exhibit "J," Exhibit "K," Exhibit "L," Exhibit "M," Exhibit "N," Exhibit "O," and Exhibit "P" handed to the witness and he is asked by complainant's solicitor when and from whom he originally received these certificates and whether or not the loan made by him to the Southern Inland Navigation and Improvement Company was made on the faith of these certificates as to the title of said company to its lands on which its bonds were secured.

A. I received these certificates in 1876 from Mr. Frye by the direction of Mr. Gleason; Mr. Frye was the attorney for and acting for the Southern Inland Navigation and Improvement Company.

They were produced to me at the time I was asked to make
190 the advance of three thousand pounds and to satisfy me that the title of the Southern Inland Navigation and Improvement Company was absolute to the lands upon which the bonds to me as collateral security were secured. I did make the advance upon the faith of the statements in these certificates. There were two other certificates in the bundle which I received and which I delivered over the same time I delivered these. I subsequently delivered these certificates to Mr. George A. Everett in order that he might deliver them to Mr. Fullerton, as they belonged, in my opinion, then to the party who had purchased the fifty bonds I originally held, Mr. Hepburn. I delivered these certificates, as above stated, in 1882 or 1883.

The certificates were offered in evidence by complainant's solicitors, and thereupon counsel for the trustees of the internal improvement fund of Florida objected to each and all of the certificates offered on the ground that they are illegal, irrelevant, and immaterial and not evidence of the facts therein set forth.

The same objection is noted by counsel for the Southern Inland Navigation and Improvement Company, with the privilege of withdrawing it later.

The certificates were filed in evidence, marked Exhibits F, G, H, I, J, K, L, M, N, O, and P.

Witness being cross-examined by solicitors for the trustees I. I. fund of Florida, said:

Q. When were these certificates first presented to you?

A. In the early part of 1876.

Q. You say they were sent to you or that you received them from Mr. Fry; who was Mr. Frye?

A. We always knew him as Judge Fry; I think his name
191 was John.

Q. You say they were delivered by direction of Mr. Gleason; how do you know that?

A. Because Mr. Gleason was present at the time and directed it.

Q. Where was this delivery made?

A. At my office, Red Lion square, London.

Witness being cross-examined by solicitors for Southern Inland Navigation and Improvement Company, said:

Q. You say you delivered these certificates to Mr. Everett, to be delivered by him to Mr. Fullerton. Was Mr. Everett at this time acting as your agent?

Question objected to by complainant's solicitors as not being in pursuit of the direct examination.

A. Yes.

Q. How long before this was it that the bonds were sold to Mr. Hepburn?

Same objection as above noted by solicitors for complainant.

A. I don't remember the exact date of the sale to Hepburn.

Q. Why did you not send these certificates to Hepburn instead of to Fullerton?

Same objection noted by complainant's solicitors as above.

A. Because Mr. Fullerton was acting for me and he had arranged the sale of the bonds, and I considered he was the right person to receive and dispose of the duplicates.

Testimony closed for this witness at present.

W. H. BENNETT.

Sworn to and subscribed before me this January 20th, 1885.

D. U. FLETCHER, *Examiner.*

192 GEO. A. EVERETT, Esq., being cautioned and sworn on behalf of the complainants, testified as follows:

I am the same Geo. A. Everett referred to in the testimony of W. H. Bennett, just closed. I was present in New York when Fullerton sold the bonds to Mr. H. C. Hepburn, and at that time, as Mr. Bennett's agent, delivered to Hepburn copies of the exhibits here produced. After the sale I sent to Mr. Bennett for the originals, and on their receipt handed them to Mr. Hepburn in the presence of his solicitor, William Fullerton. The copies were delivered about one month prior to filing of the bill by the Union Trust Company in this cause; the originals as soon thereafter as they could be received from London, probably five weeks later.

Witness, being cross-examined by solicitors of the trustees I. I. fund, said:

Q. Who made the copies that were delivered before the originals were?

A. They were made, as is the custom in England, by a regular law stationer; the name is Moulton, of Chancery Lane. I know by comparisons made before and since their delivery that the copies so made were true copies of the originals.

This testimony here closed for the present.

GEO. A. EVERETT.

Sworn to and subscribed before me this January 20th, 1885.

D. U. FLETCHER, *Examiner.*

193 EXHIBIT "F."

OFFICE OF SECRETARY OF STATE,
TALLAHASSEE, FLORIDA, *Nov.* 17, 1871.

SIR: I, Jonathan C. Gibbs, secretary of state of the State of Florida, do hereby certify that Harrison Reed is Governor of the said State of Florida; S. B. Canover, State treasurer, and J. S. Adams, com-

missioner of lands and immigration, and that Harrison Reed, by virtue of his office as Governor, is president of the board of trustees of the internal improvement fund, and that J. S. Adams is secretary of the said board, and that the signatures to the certificates hereunto attached are genuine and full faith and credit is due thereto.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at the capitol, on the day and year above written.

[SEAL.] JONATHAN C. GIBBS,
Secretary of State.

194 EXHIBIT "G."

EXECUTIVE OFFICE,
TALLAHASSEE, FLORIDA, *Nov.* 17, 1871.

SIR: In response to your enquiry we have to state that the lands granted to the Southern Inland Navigation and Improvement Company were granted to the State of Florida by the United States Government for internal improvements and drainage purposes, and that the same were granted in pursuance of law, and that no railroad *and* other corporation has any title or interest therein except the said Southern Inland Navigation and Improvement Company.

HARRISON REED,
Gov. & Pres. Board Trustees Int. Imp. Fund.
[SEAL.] S. B. CANOVER,
State Treasurer.
J. S. ADAMS,
Com. of Land and Immigration.

To Hon. N. H. Moragne, president Southern Inland Navigation and Improvement Company.

195 EXHIBIT "H."

OFFICE OF COMMISSIONER OF IMMIGRATION,
TALLAHASSEE, FLORIDA, *October* 31, 1871.

To whom it may concern:

SIR: I, J. S. Adams, secretary of the board of trustees of the internal improvement fund, hereby certify that I am one of said trustees, and have been one since and before the grant of lands to the Southern Inland Navigation and Improvement Company; that the grant to the company has been conveyed by absolute deed in fee simple duly recorded; that the title of the company in said lands is perfect, and that there is no connection between the Southern Inland Navigation and Improvement Company and any railroad or other corporation in regard to their title to said land, and that no railroad or any other corporation or individual has any lien or legal claim upon said lands, and that the title of said Southern Inland Navigation and Improvement Company to said lands is clean and perfect.

In testimony whereof I have hereunto affixed my official seal and subscribed my name, at Tallahassee, this 31 day of October, A. D. 1871.

[SEAL.] J. S. ADAMS,
Commissioner of Lands and Immigration and Secretary of Board of Trustees of Internal Improvement Fund.

196 EXHIBIT "I."

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the paper hereunto annexed, signed by Harrison Reed, as Governer of the State of Florida, is under the great seal of the said State of Florida, and as such is entitled to full faith and confidence.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this eleventh day of November, A. D. 1871, and of the Independence of the United States of America the ninety-sixth.

[SEAL.] HAMILTON FISH.

197 EXECUTIVE OFFICE,
TALLAHASSEE, FLORIDA, *Oct.* 31, 1871.

SIR: I, Harrison Reed, Governor of the State of Florida, *ex officio* one of the trustees of the internal improvement fund of the State of Florida and president of the board of trustees, hereby certify that J. S. Adams, the commissioner of lands and immigration, is secretary of the trustees of the internal improvement fund, and that the certificate by him hereto attached is true and correct, and that full faith and credit are due his certificates and transcripts of record.

Witness my hand and seal of the secretary of state hereto attached. HARRISON REED,
Governor of Florida.

Attest: [SEAL.] JONATHAN C. GIBBS,
Secretary of State.

198 EXHIBIT "J."

STATE OF FLORIDA, } ss:
County of St. John's, }

I hereby certify that there is no lien, judgment, mortgage, or other encumbrance of record in either the office of the circuit or county clerk of said county against the Southern Inland Navigation and Improvement Company, nor have they conveyed any of the land deeded to them by the trustees of the internal improvement

fund other than a deed of trust to the Union Trust Company of New York, said deed of trust being dated March 20th, 1871, and recorded in this office April 6th, 1871, in Record Book "T."

In testimony whereof I have hereunto set my hand and the seal of the circuit court for said county this 7th day of April, A. D. 1871.

[SEAL.] CHARLES D. LINCOLN,
Clerk of the Circuit and County Courts of said County.

199 EXHIBIT "K."

STATE OF FLORIDA, } ss:
Marion County, }

I, James A. Harris, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that there are no liens, judgments, mortgages, or other encumbrances of record in either the office of the circuit or county clerk of said county against the Southern Inland Navigation and Improvement Company, nor have they conveyed any of the land deeded to them by the trustees of the internal improvement fund other than a deed of trust to the Union Trust Company of New York, said deed of trust being dated March 20th, 1871, and recorded in this office ninth day of April, A. D. 1871, in record book lettered "I" for the record of deeds of conveyances.

In testimony whereof I have hereunto set my hand and the seal of said court, at the court-house in Ocala county and State aforesaid, this the ninth day of April, A. D. 1871.

[SEAL.] JAMES A. HARRIS,
Clerk of the Circuit Court and ex Officio Clerk of the County Court, Marion County, Florida.

200 EXHIBIT "L."

STATE OF FLORIDA, } ss:
Orange County, }

I, J. P. Hughey, clerk of the circuit court in and for the State and county aforesaid, do hereby certify that there are no liens, judgments, mortgages, or other encumbrances of record in either the office of the circuit or county clerk of said county against the Southern Inland Navigation and Improvement Company, nor does it appear from the records of said office that they have conveyed any of the land deeded to them by the trustees of the internal improvement fund other than a deed of trust to the Union Trust Company of New York, said deed of trust being dated March 20th, 1871, and recorded in that office in Book "A" of miscellaneous records of Orange county.

In testimony whereof I have hereunto set my hand and seal of office this the 11th day of April, 1871.

[SEAL.] J. P. HUGHEY,
Clerk of Circuit Court and ex Officio Clerk of the County Court for Orange County, Fla.

201 EXHIBIT "M."

STATE OF FLORIDA, } ss:
Volusia County, }

I, William S. Thayer, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that there are no liens, judgments, mortgages, or other encumbrances of record in either the office of the circuit or county clerk of said county against the Southern Inland Navigation and Improvement Company, nor have they conveyed any of the land deeded to them by the trustees of the internal improvement fund other than a deed of trust being dated March 20th, 1871, and recorded in this office the 13th day of April, A. D. 1871, in Deed Book "A" for the record of deeds of conveyances.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, *house* at Enterprise, this 13 day of April, A. D. 1871.

[SEAL.] WILLIAM S. THAYER, *Clerk.*

202 EXHIBIT "N."

STATE OF FLORIDA, } ss:
Putnam County, }

I hereby certify that there is no lien, judgment, mortgage, or other encumbrance of record in either *of* the office of the circuit or county clerk of said county against the Southern Inland Navigation and Improvement Company, nor have they conveyed any of the lands deeded to them by the trustees of the internal improvement fund other than a deed of trust to the Union Trust Company of New York, said deed of trust being dated March 20th, 1871, and recorded in this office April 7th, A. D. 1871, in Book "C" of the records of Putnam county.

In testimony whereof I have hereunto set my hand and the seal of the circuit court for the said county this the 7th day of April, A. D. 1871.

[SEAL.] R. H. McLEOD,
Clerk of Court.

203 EXHIBIT "O."

STATE OF FLORIDA, } ss:
County of Brevard, }

I, A. M. Moore, deputy clerk of the circuit court in and for the county and State aforesaid, do hereby certify that there is no lien, judgment, mortgage, or other encumbrance of record in either of the offices of the circuit or county court of said county against the Southern Inland Navigation and Improvement Company, nor have they conveyed any of the lands deeded to them by the trustees of the internal improvement fund other than a deed of trust or mortgage executed by the said Southern Inland Navigation and Improvement Company to the Union Trust Company of New York,

said deed of trust or mortgage being dated March 20th, A. D. 1871, and recorded in this office the 22nd of April, A. D. 1871, in record book lettered "A" for the record of deeds and conveyances.

In testimony whereof I have hereunto set my hand and the seal of the circuit court, at St. Lucie, county and State aforesaid, this twenty-fourth day of April, A. D. 1871.

[SEAL.] A. M. MOORE,
Deputy Clerk C. C., Brevard County, Fla.

204 EXHIBIT "P."

UNITED STATES OF AMERICA, *Southern District of Florida:*

District Court of the United States.

I, James W. Locke, clerk of the circuit and district courts of the United States in and for the southern district of Florida, do hereby certify that as such clerk I have the records and files of said courts, and that there is therein no judgment against the Southern Inland Navigation and Improvement Company, nor injunction nor suit pending against the same.

In witness whereof I hereunto set my hand and the seal of said circuit court this 17th day of April, 1871.

[SEAL.] JAMES W. LOCKE, *Clerk.*

205 Circuit Court of the United States of America, Northern District of Florida.

UNION TRUST COMPANY OF NEW YORK

vs.

SOUTHERN INTERNAL NAVIGATION & IMPROVEMENT CO. & TRUSTEES OF INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA.

The President of the United States of America to William H. Gleason, Greeting:

You are hereby commanded that, setting aside all manner of excuse and delay, you be and appear before D. U. Fletcher, examiner of the circuit court in said cause, at his office, in the city of Jacksonville, on the 23 day of December, at 10 o'clock in the forenoon, to testify and give evidence before said court in a cause depending in the circuit court of the United States for the northern district of Florida, wherein the Union Trust Company of New York is plaintiff and the S. I. N. and I. Co. and Trustees of I. I. Fund of Florida are defendants, on the part of the said Trustees of I. I. Fund of Florida.

Herein fail not.

In testimony whereof I have hereunto set my hand, at office, in said district, this 19th day of December, A. D. 1884.

D. U. FLETCHER, *Examiner.*

206 THE UNION TRUST COMPANY OF NEW YORK

vs.

THE TRUSTEES OF THE INTERNAL IMP. FUND & SOUTHERN INLAND NAVIGATION COMPANY OF FLORIDA.

JACKSONVILLE, FLORIDA, *March 28th*, 1885.

WILLIAM H. GLEASON, Esq., being duly sworn, deposes and says—there being present Messrs. Fleming and Daniel, E. M. Cheney, C. R. and J. C. Cooper, and Geo. A. Everett on behalf of the defendant, Southern Inland Navigation and Improvement Company—as follows:

Q. State when you first became connected with the Southern Inland Navigation and Improvement Company.

A. When the company was first organized.

Q. State whether or not the two million bonds of the company which are referred to in this suit were ever in your possession or under your control as financial agent for the company or otherwise. And, if so, when and for what length of time?

Question objected to by counsel for the Union Trust Company because it is irrelevant to the issues and because it contains facts not proven.

A. They came under my control by virtue of my being president for the company (at the time I was elected president) and by virtue of a resolution of the said company dated July 7th, 1874, and found on page 61 of the records of the Southern Inland Navigation and Improvement Company. They remained under my control
207 and subject to my order until they were delivered in my order to Mr. W. H. Bennett, of London, with instructions for him to deliver them to the banking house of Smith, Paine, and Smith, of London, subject to the order of Sir Edward Reed, in accordance with a contract made and entered into by the said company with the said Sir Edward James Reed, being dated March 23d, A. D. 1878.

Q. Are you, as president of the company, officially cognizant of all contracts made with regard to these bonds and of all liens upon them or claims against them, if any, up to the time of their delivery to Reed under said contract?

Question objected to by complainant's solicitors on the ground that it is irrelevant, and because if he is officially cognizant of these facts he must obtain that knowledge from record, which is the best evidence.

A. I am.

Q. Did the Southern Inland Navigation and Improvement Company ever enter into any contract with Charles H. Allen, of the American Contracting Company; and, if so, is that contract entered in the records of the company, and can you produce it?

Counsel for complainant objects to the question on the same ground as last above noted.

A. The company entered into a contract for the completion of its work with Willis Gaylord, dated April 12th, 1870. That contract was assigned by Gaylord to the American Contracting Company, of which Charles H. Allen was president. This contract is found on page 20, *et seq.*, of the records of the company now in evidence. The contract is offered in evidence by solicitor for Southern Inland Navigation Co.

208 Solicitors for the complainant object to the introduction of said contract and evidence as to its assignment unless the original contract with the endorsement of assignment is produced or accounted for, and because it is irrelevant under the issue and reference.

Record filed.

Q. Can you state from your recollection when the assignment of the contract was made to the said contracting company?

Same objection to this question as above by complainant's solicitors.

A. I don't recollect the date, but it was some time previous to February 23rd, 1872.

Q. Have you got the original contract, or do you know where it is?

A. The original contract was executed in duplicates; one of them was delivered to Willis Gaylord and the other to the Southern Inland Navigation and Improvement Company. I do not know where the one is that the company has. I may be able to find it. The records of the company, as referred to, show an official copy.

The last question and answer objected to by complainant's solicitors because this witness is not the proper person by whom to prove loss of the original, and because this is improper testimony as to its being an official copy or any other copy.

Q. Did the American Contracting Company, under that or any other contract, ever become entitled to any of the said bonds; and, if so, how many?

Question objected to by solicitors of the complainant because no such contract and no such bonds are included in the reference and issues of this suit, and because the question is too indefinite
209 and general in its character and seeks the opinion of the witness.

A. They became entitled to seven hundred and fifty bonds, which they had earned under that contract.

Q. Were the bonds which the American Contracting — had so earned, or any portion of them, ever delivered to the American Contracting Company; and, if not, what disposition was made of them, and for what purpose?

Same objection as the last.

A. The president of the American Contracting Company, Chas. H. Allen, was made the attorney of the company for the purpose of

selling the two million dollars of bonds, as appears by resolution which appears on pages 48 and 49 of the records of the Southern Inland Navigation and Improvement Co., now in evidence, dated July 23d, 1872, and March 22nd, 1872, and instructions were given to the City Bank of London to sanction the sale made by the said Allen. The whole two millions of dollars of bonds were placed under his control. The proceeds of seven hundred and fifty bonds would belong to him. He did not succeed in making any sale of the bonds.

Q. State whether or not the Southern Inland Navigation and Improvement Company subsequently made a contract with Sir Edward James Reed in relation to the sale of these two million bonds; if so, can you produce that contract or an official record of it in the minutes of the company?

Solicitors for complainant note the same objections as to the contract above.

A. They did make such contract, a copy of which is spread out on the records of the company and was ratified by the board of directors and bears date March 23rd, 1878, which copy commences on page 84 and ends on page 98 of the minutes or record of said company in evidence.

210 Q. At the time these bonds were delivered to Reed under this contract did the Southern Inland Navigation and Improvement Company claim title to the entire two million bonds or their proceeds? If not, state who else owned or was interested in them or any portion of them.

A. Mr. W. H. Bennett had a claim upon seven hundred and fifty of the bonds. I had a claim on the bonds for moneys advanced to the company, representing myself and other parties.

Q. Subsequent to the making of this contract with Reed were any of these bonds issued to Reed? And, if so, state the number and the manner of their issue.

Question objected to by complainant's solicitors on the ground that it is irrelevant and because it is not the best evidence.

A. Mr. Reed informed the company that, in accordance with the provisions of this contract, he had taken three hundred and twelve of the bonds; had cut the coupons off and sent them to the company.

The testimony is objected to by complainant's solicitor as hearsay.

Q. Are you acquainted with the handwriting and signature of Sir Edward James Reed?

A. I am.

Q. Please state whether or not that is his handwriting, and whether it is the communication referred to. (Witness handed a letter.)

Question objected to by complainant's solicitors on the ground it is irrelevant and improper.

A. This letter bears his signature and is the communica-
211 tion referred to.

The letter is offered in evidence and is filed and marked Exhibit "Q."

Q. Have you read the testimony of Mr. Geo. A. Everett given in this cause before Nettleton and Orr in New York?

A. I have.

Q. Please state when and how you first became acquainted with Mr. Everett.

A. I met him in New York some time in January, A. D. 1883, in the office of J. B. C. Drew, who introduced us.

Q. How did you come to meet him in New Yerk at the time stated?

Question objected to as being irrelevant.

A. I came as requested by him in a letter dated November 20th, 1882, and which I now hold.

The letter is offered in evidence by solicitor for Southern Inland Navigation and Improvement Company.

Solicitors for complainant object to the introduction of the letter without a proper predication of proof.

Q. Are you acquainted with Mr. Everett's handwriting?

A. I am. This letter is in his handwriting and I received it by due course of mail, and in answer to it I met him in New York.

The letter is again offered in evidence.

Its introduction is objected to as irrelevant. The letter is filed in in evidence, marked Exhibit R.

Q. Were you acquainted with Mr. Everett, or had you ever met him previous to that meeting in New York?

A. I have no recollection of meeting him until I met him in New York at the time stated.

212 Q. Did you, when you met him in New York in 1883, have any conversation with him at the St. Denis Hotel or at Mr. Drew's office relative to the bonds of the Southern Inland Navigation and Improvement Company and the bonds then held by Mr. Bennett? And, if so, state what that conversation or conversations was or were.

A. We had several interviews and talked the matter over freely. I told him everything that I have heretofore testified to in my testimony to-day to this extent. I told him of the contract existing between the Southern Inland Navigation and Improvement Company and the American Contracting Company; of the number of bonds which they had earned; of the Reed contract; showed him the communication from Reed filed in evidence to-day. I informed him of the contract existing between the Southern Inland Navigation and Improvement Company and the bonds of trustees of the internal improvement fund. I informed him of the company's borrowing the three thousand pounds from Mr. Bennett, and of the amount of money which I received from Mr. Bennett, and of the fact that Mr. Bennett did not forward the balance of nine hundred pounds which was due in that negotiation when he agreed to; that he

did not pay the nine hundred pounds which is due the company or the eight pounds that was to be paid the City Bank of London until after the contract had been made between Sir Edward James Reed and the company. I also informed him that the company could not legally issue more than the bonds earned by the American Contracting Company. I did not tell him that if more than fifty bonds were issued that it would render me liable with penitentiary.

213 I did tell him that if more than seven hundred and fifty bonds were issued by me it would be an act of malfeasance upon my part and subject me to criminal prosecution, and might send me to the penitentiary.

Q. State what, if anything, was said by Mr. Everett with regard to the fifty bonds held by Mr. Bennett and the foreclosure of the mortgage for their payment.

Question objected to because it is irrelevant and hearsay.

A. He said he fully represented Mr. Bennett in this matter, and proposed that the deed of trust be foreclosed on these fifty bonds alone and ignored all other claims, and by so doing I could be reimbursed by receiving one-half of the property. This I declined to do, as I represented other interests besides my own. He threatened, if I did not, to have the bonds sold to some outside party and bring suit on the note. He did bring suit on the note.

Solicitor for complainant objects to that part of the answer having reference to suit on a note because it is not responsive to the question and because it is not the best evidence.

Q. Did you say to Mr. Everett that Mr. Bennett was the only person who held any bonds for value?

A. No; I did not. I always insisted that the bonds due the American Contracting Company were out for value received. He insisted they were not at all. (This last sentence is withdrawn by witness.)

Witness, being cross-examined by solicitor for the complainant, said:

214 Q. Were these two million bonds ever in your actual possession after they were certified by the Union Trust Company; if so, when and where?

A. I considered them in my possession. They were on deposit at the City Bank of London, subject to my order.

Q. If you had gone to this bank and demanded of them these bonds would they have been delivered to you at once and without payment of the charges upon them?

Question objected — by solicitor for Southern Inland Navigation and Improvement Company on the grounds that this — not the proper witness to testify as to what the bank would have done in an assumed case.

A. I do not know what the bank would have done. The bank had advanced the express charges upon them, and there were other

charges due the Union Trust Company, which were all included in the eight hundred pounds I left with Mr. Bennett to pay them with, and which was paid them some two or three years afterwards.

Q. When were you elected president of this company?

A. On the 19th day of January, A. D. 1874.

Q. By whom were these bonds sent to the City Bank of London?

A. They were sent by the Union Trust Company at the request of the Southern Inland Navigation and Improvement Company.

Q. Has the Southern Inland Navigation and Improvement Company any statements made at the time the work was done, or about that time, of the work done by the American Contracting Company and of the amount of money, if any, expended by that company on this work? If so, please produce them.

Question objected to, and solicitor for the Southern Inland Navigation and Improvement Company declines to produce any documents without legal demand and notice.

215 The defendant company and its solicitor are requested to file any such statements or exhibits with the examiner as a part of this testimony by the solicitors of the complainant.

A. The chief engineer of the work issued his certificate to the effect that the dredge-boat had been built in accordance with the contract; that the river had been improved and made navigable from Lake Harney to Lake Washington in conformity to the contract.

Q. Who was the chief engineer of the company and who made the certificate?

A. I was myself at that time.

Q. Who composed the American Contracting Company?

The best evidence is the records of the company, and on that ground question objected to.

A. Chas. H. Allen was one, Willis Gaylord, Jno. Flanagan, and others, whose names I forget.

Q. Were you a member of that company?

A. No, sir.

Q. When was this company incorporated and where was its home office?

A. I was informed it was incorporated in the State of Connecticut. I met the parties in New York city at 58 Wall street, which was the office there.

Q. What was the business of this company?

A. To take contracts of internal improvements of all kinds.

Q. As chief engineer did you exhibit this dredge you speak of; what was its capacity and what did it cost?

A. I think it cost about fifteen thousand dollars. Its capacity was five hundred yards per day.

216 Q. Whose property was the dredge?

A. It was the property of the American Contracting Company.

Q. How long was this contracting company actually at work

dredging or straightening the river and lakes you speak of and about what force of men did they have at work?

A. They commenced work some time in the winter and quit some time in the September following. They had a superintendent and captain, chief engineer and assistant, cook, and a flat to haul wood on, and employed Harts' steamer, the Panasoffkee, to tow the dredge from place to place and to tow wood; in some places wood had to be towed a hundred miles.

Q. Do you know what amount of money did the American Contracting Company spend in this work?

A. I do not know.

Q. Did you ever have any conversation with Mr. Allen, president of this company, about the amount of money he expended on this work?

A. *He* did not.

Q. Did you, as chief engineer of the Southern Inland Navigation and Improvement Company, examine the work going on; if so, how often?

A. I did. I took Mr. Adams, the secretary of the board of trustees of the internal improvement fund, there. I was there several times.

Q. How many yards of actual dredging did this contracting company do?

A. I don't know. The work was not to be paid for by measurements; consequently I never measured it.

Q. Are you a civil engineer by profession?

A. I am.

217 Q. As a civil engineer, after examining the work done, could you not give us an estimate of its cost?

A. I suppose I might. On the basis the Government gets its work done it would cost a hundred and fifty thousand dollars.

Q. I understood this company made the St. John's river navigable from Lake Harney to Lake Washington. For what draft of steamboats or sailing vessels was it made navigable, and how long will it remain navigable, and for what size of boats was it navigable before this dredging, and what was the character of obstructions removed?

A. It was made navigable for a boat drawing three feet of water; sometimes it may be reduced to two feet. It is navigable now, and is the principal means of communication to Indian river. It is constantly navigable. It was not navigable for a steamboat of any draft before the dredging. The work was cutting off and deepening the bars at Lake Harney and other places; cutting off elbows and straightening the river.

Q. Did the American Contracting Company do all the work they contracted to, or did they stop?

A. No, sir; they contracted to do the entire work clean through, and stopped before they had completed the work they contracted to do.

Q. At the time you gave the order to William H. Bennett to get the two thousand bonds from the bank to be delivered to Reed was not

the title to the two thousand bonds then in the company, and did you not as president have the right to deliver the two thousand bonds under the contract with Reed, and were they not so de-
218 livered to Reed on your order as president of the company?

A. I considered that the title to the bonds was in the company, subject to these liens I have before testified about in my direct examination. According to the arrangements with different parties the bonds were to be held together and sold in a lump. These two thousand bonds were delivered to Reed on my order as president of the company according *with* the contract with Reed.

Q. Did you consider that Sir Edward J. Reed had any valid claims on your company or any right to retain any of these bonds for himself, as referred to in his letter, and did the said Reed ever actually loan your company one dollar or make sales of any bonds for your company and report the process to the company?

Counsel for defendant company objects to the question on the grounds, 1st, it simply calls for an expression of opinion, and, 2nd, because it refers to a matter exclusively between the company and Sir Edward J. Reed and not relevant to this case. Under advice of counsel the witness declines to give an opinion.

A. I decline to answer, by advice of counsel.

Q. Did the defendant company owe Sir Edward J. Reed fifty-four thousand five hundred and fifty pounds, mentioned in his letter filed in evidence, for which he states he has taken three hundred and twelve pounds? If they owed it, for what?

Counsel for defendant company objects to the question because the amount, if any, which the company may owe Sir Edward J. Reed is in dispute between Reed and the company, and until
219 such dispute is determined the witness cannot testify as to what amount may or may not be due.

A. The defendant company does not owe Sir Edward J. Reed that amount.

Q. Have you not, since these bonds were placed in Sir Edward J. Reed's hands, as president of the said company, given an order on him for the bonds to deliver them up as the property of the company; and, if so, with what result?

Counsel for defendant company objects to question as being irrelevant.

A. I have written him communications several times and had a personal interview on the subject requesting a delivery of the bonds. He refused to deliver them.

Q. Did you not write several letters to Mr. Bennett in which you admitted his claim and advised him to sue for it?

Question objected to by counsel for defendant company as being parol evidence of the contents of a written instrument.

A. I have written him several letters upon that subject. I do not remember their contents. The substance was I advised him to sue for his claim.

Q. Were the interest coupons on the outstanding bonds of the company ever paid—were they?

A. Not to my knowledge.

Q. Was any sinking fund paid to the Union Trust Company under the mortgage?

A. Not to my knowledge.

220 CHAS. P. GREENOUGH, Administrator,

vs.

THE TRUSTEES OF THE INTERNAL IMP. FUND.

In the Matter of Petition of WM. H. GLEASON.

It is agreed by and between the counsel for the respective parties to this suit that in the absence of Philip Walter, master in said cause, D. U. Fletcher shall act as examiner in taking testimony herein on this 28th day of March, 1885, the testimony so taken to be used by either party in the said cause and also in the case of the Union Trust Company *vs.* The Southern Inland Navigation and Improvement Company and the Trustees of the Internal Improvement Fund.

It is also further agreed that such portions of the journals of the Legislature of the State of Florida, including reports of public officers, as relates to questions in controversy in either or both of the above suits shall be read in evidence by any party in said suits, subject to objections as to irrelevancy. Solicitor for the petitioner here gives notice that he read in evidence a resolution of the board of trustees dated March 16th, 1870, published on page 109 of the journal of the Assembly for 1871; also a resolution dated August 24th, 1870, on page 111 of said journal; also resolution dated September 19th, 1870, on page 112 of said journal.

Q. In your previous testimony in this case you state the
221 company made an arrangement with you to furnish coupons to pay for the lands which the company had contracted to purchase of the trustees of the internal improvement fund; state what, if any, consideration you were to receive for so doing.

A. It was agreed between the Southern Inland Navigation and Improvement Company and myself that I should furnish the coupons at my own expense and should have the lands conveyed by the board of trustees to the Southern Inland Navigation and Improvement Company, for which they were to pay me twenty-five dollars in cash for each section to them conveyed, to be paid out of the proceeds of the bonds when sold. It was further agreed that for my services I should have forty sections of land for my own use and benefit.

Q. What particular lands were you to receive?

A. The lands within the limits of the grant as granted by the board of trustees to the said company, being the lands which were to be paid for by these coupons.

Solicitors for the trustees of I. I. fund object to the above testimony as irrelevant.

Q. Did you receive the forty sections referred to in your agreement; and, if so, when and how?

Question objected to by solicitors for trustees I. I. fund as being irrelevant and not in rebuttal.

A. I received thirty-six sections and $\frac{30}{100}$, which was conveyed to Mrs. Gleason by my order.

Q. Witness handed a paper and asked if he is acquainted with the signature to it; and, if so, whose is it?

A. I am. It is S. B. Canover's signature. I received it from S. B. Canover.

222 The paper is offered in evidence and filed, marked Exhibit "S."

Q. State whether or not the lands described in this certificate were conveyed to Mrs. Gleason, at your request, as part of compensation to which you were entitled for services, as heretofore testified to.

A. They are the same lands.

Q. What funds are referred to in Canover's certificate as having been placed in hands September 10th, 1870? Were the bonds referred to in certificate Exhibit "S" as placed in Canover's hands Sept. 10th, 1870, the same funds referred to—S. B. Canover's receipt of that date, which is filed in evidence in this cause?

A. They are.

Q. This paper apparently shows that these lands were to be conveyed to you individually at the rate of one and $\frac{25}{100}$ per acre? State whether or not this transaction was a part of and in pursuance of the contract between the trustees of the internal improvement fund and the Southern Inland Navigation and Improvement Company, and whether they were paid for at the rate of one and $\frac{25}{100}$ dollars per acre, or at what price.

Question objected to by solicitors for the trustees of the I. I. fund on the ground that it is an attempt to contradict the written evidence as contained in Exhibit "S."

223 EXHIBIT "Q."

BROADWAY CHAMBERS, WESTMINSTER,
LONDON, S. W., *March 26th*, 1881.

To Governor Gleason, chairman of the Southern Inland Navigation and Improvement Company, Florida, U. S. A.

DEAR SIR: Herewith I have the pleasure to hand you my account, in duplicate, against your company to present date under the agreement between us of March 23rd, 1878. You will observe that it shows an indebtedness to me at yesterday's date of 54,550 pounds. In order to prevent as far as possible the further accumulation of interest against the company on account of the first loan of 50,000 pounds I have thought it desirable for the benefit of the company to exercise the option given to me by clause 15 of purchasing bonds at 80 per cent. and applying them, clause 16, in repayment, as

nearly as possible, in full of the above first loan. For the purpose I have taken 312 bonds, which, at 80 per cent., are equivalent to 49,920 pounds, for which amount I herewith enclose receipt, together with the coupons of the 312 bonds cut off and cancelled. The account is sent in duplicate that you may, if you please, sign or initial one copy and return it to me for record.

The first loan being exhausted by the operation of the agreement, I now have the pleasure to forward you a formal notification
224 of the further loan of 25,000 pounds which I have this day made the company. Observe that while quite ready to increase the amount when necessary I have thought it desirable in the interest of your company to limit the second loan to the amount named. I shall feel obliged by your forwarding me promissory notes of the company for the amount in pursuance of clause 13.

I avail myself of the opportunity of again calling your attention to the fact that your company has not yet taken steps to show and establish to my satisfaction the various matters set forth in clause I. I trust that the recent railway decision of the Supreme Court will facilitate your speedy compliance with the conditions of the agreement in this and other respects. I presume, of course, that the delay that has occurred on your part, however much to be regretted, has been unavoidable, but I earnestly hope it may not continue much longer.

In order to assist your company in this matter, and to set free the enterprise of your company, I am making renewed strenuous exertions to free the State of Florida from its indebtedness, and to set free the bonds from the liens that encumber them, and I am happy to say that I am now sanguine of soon attaining success in this respect; although under no obligation, of course, to do this, I am sparing no pains to accomplish the object.

I am, sir, yours very truly, E. J. REED.

225 EXHIBIT "R."

39 WALL ST., NEW YORK CITY, *Nov.* 20, 1882.

I have seen your various letters to Mr. Bennett and General Roddy, and am now in New York for the purpose of taking action of some kind to recover the money due Mr. Bennett on the bills and collateral security of the Southern Inland Navigation and Improvement Company, but before doing so I am anxious to see you and confer with you as to the best manner of acting. I am informed that you are now in Florida and will come there to see you if it is impossible for you to — New York, but would prefer to see you here.

Will you favor me with a line by return, stating where and when I could see you, and generally with your views as to the best method of procedure,

And oblige, yours truly, GEO. A. EVERETT.

W. H. Gleason, Esq., Jacksonville, Florida.

P. S. I have a portion of the bonds with me and the remainder are subject to call when needed. I have full power from Mr. Bennett to act in the matter.

G. A. E.

226 EXHIBIT "S."

I hereby certify that W. H. Gleason has applied to purchase the following-described lands, to wit:

Parts of sections.	Sec.	Town.	Range.	Acres & hund'ths.
All of fractional	25	20 S.	33 E.	9.44
All of fractional	26	20 S.	33 E.	624.84
All of section	27	20 S.	33 E.	689.44
N. E. ¼, E. ½ of N. W. ¼, N. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	28	20 S.	33 E.	360.00
E. ½ of N. E. ¼ & S. W. ¼ of N. E. ¼	29	20 S.	33 E.	120.00
E. ½ of sec.	3	22 S.	33 "	321.20
W. ½ of sec.	4	22 S.	33 "	320.12
E. ½ of sec.	9	22 S.	33 E.	320.72
All of sec.	10	22 S.	33 E.	642.16
All of sec.	28	22 S.	33 E.	640.80
S. E. ¼	10	21 S.	34 E.	160.00
S. W. ¼ & ½ of S. E. ¼	14	21 S.	34 E.	240.00
S. ½ of sec.	7	21 S.	32 E.	308.67
S. ½ of sec.	8	21 S.	32 E.	319.76
S. ½ of sec.	9	21 S.	32 E.	320.12
S. ½ of sec.	10	21 S.	32 E.	320.24
S. ½ of sec.	11	21 S.	32 E.	320.16
N. ½ of sec.	14	21 S.	32 E.	319.84
N. ½ of sec.	15	21 S.	32 E.	320.08
Lots 1 and E. ½ of S. E. ¼	1	19	34	128.00
Lots 1 and 4	12	19	34	105.50
All of fractional	13	19	34	6.76
All of section	1	27	36	640.20
All of sec.	2	27	36	641.00
227 E. ¼, E. ½ of N. W. ¼ & E. ½ of S. W. ¼ N. W. ¼	3	27 S.	36 E.	481.10
	4	27 S.	36 E.	157.50
E. ½ of sec.	10	27 S.	36 E.	320.24
All of sec.	11	27 S.	36 E.	640.48
All of sections	12 & 13	27 S.	36 E.	1,280.00
All of sec.	14	27 S.	36 E.	640.52
All of fractional	20	27 S.	36 E.	224.00
All of section	21	27 S.	36 E.	641.12
All of section	23	27 S.	36 E.	640.40
All of section	24	27 S.	36 E.	689.84
All of section	25	27 S.	36 E.	639.84
All of section	28	27 S.	36 E.	641.20
All of section	33	27 S.	36 E.	640.28
All of section	34	27 S.	36 E.	639.68
All of section	35	27 S.	36 E.	640.28
All of section	36	27 S.	36 E.	640.00
W. ½ of N. W. ¼, W. ½ of S. E. ¼ of S. W. ¼	2	27 S.	37 E.	200.52
Lots 1, 2, and 3	3	27 S.	37 E.	124.00
S. E. ¼ of N. W. ¼ & W. ½ of N. W. ¼	5	27 S.	37 E.	120.00
All of sec.	6 & 7	27 S.	37 E.	1,280.00
E. ½ of S. E. ¼	8	27 S.	37 E.	80.00
All of fractional	10	27 S.	37 E.	15.00

EXHIBIT "S"—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres & hund's.
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & lots 1, 2, and 3	11	27 S.	37 E.	273.50
N. ½ of N. W. ¼ & N. E. ¼	18	27 S.	37 E.	240.00
S. ½ of section	19	27 S.	37 E.	320.00
W. ½ of S. W. ¼	28	27 S.	37 E.	80.00
228 S. E. ¼ & W. ½ of sec.	29	27 S.	37 E.	480.00
All of sections	30, 31, & 32	27 S.	37 E.	1,920.00
W. ½ of S. E. ¼ and W. ½	33	27 S.	37 E.	400.00

And that said land is swamp land and subject to entry at $1.25 per acre, containing twenty-three thousand one hundred and eighty-eight acres (23,188), $28,985.00.

FRANK W. WEBSTER,
Salesman of Board Trustees Internal Improvement Fund.
Per W. T. W., *Clerk.*

TALLAHASSEE, FLORIDA, *Feb'y* 18, 1871.

I hereby certify that the funds placed in my hands September 10th, A. D. 1870, for the payment of the above-described lands, as per certificate of deposit of above date, are still in my possession.

S. B. CANOVER,
State Treasurer.

I do hereby sell, transfer, and set over unto Sara G. Gleason all of the lands described in the written certificate—the lands situated in township twenty-seven, in ranges thirty-six and thirty-seven south of the land in the aforesaid transfer—to Mr. H. Clay.

W. H. GLEASON.

229 A. The consideration in the deed to the Southern Inland Navigation and Improvement Company is one dollar. According to the terms and conditions of the contract between the board of trustees and the Southern Inland Navigation and Improvement Company *was* the board should continue to sell lands within the limits of the grant, and the proceeds arising therefrom should be placed to the credit of the company. The board of trustees were selling lands at that time at one $\frac{25}{100}$ dollars per acre. The certificate of a salesman on that entry is the certificate showing the price the lands were being sold for. Before the delivery of the deed to the Southern Inland Navigation and Improvement Company I had a settlement with Mr. Adams. These lands were a portion of the lands which the trustees of the internal improvement fund had agreed to convey to the Southern Inland Navigation and Improvement Company and were settled for as agreed, at the rate of twenty-five dollars per section.

Q. State whether or not, previous to the execution of the deed by

the trustees to the Southern Inland Navigation and Improvement Company, the coupons covered by those receipts given by Canover and in evidence in this case were treated by the trustees as your individual property or as the property of the Southern Inland Navigation and Improvement Company.

Question objected to by counsel for trustees I. I. fund and for H. C. Hepburn, intervening, because it asks for a construction of the conduct of the trustees and seeks to contradict the coupons themselves.

A. They were treated as my individual property.

230 Q. Did you deposit with the trustees any other coupons besides these covered by these receipts; and, if so, were such deposits carried into the same accounts with the coupons covered by these receipts?

Question objected to as not being the proper evidence of the facts sought to be elicited.

A. I did make other deposits of coupons and they were carried into the same account.

Q. With whom were such deposits made and who kept the accounts?

Question objected to as irrelevant, the witness having put in as the foundation of his case the coupons embraced in the three receipts set up in his petition.

A. The deposits were made with Mr. Adams and he kept the accounts.

Q. Did you, at any time after the execution of the deeds to the Southern Inland Navigation and Improvement Company and to Mrs. Gleason, have any settlement or statement of account with Mr. Adams, as treasurer of the board of trustees, relative to the coupons and lands?

A. I did.

Q. Have you a copy of that statement?

A. I have not.

Q. Have you examined your accounts and memoranda and are you able to state what that settlement was; if so, have you made a statement which will correspond with the settlement made at that time?

Question objected to as being illegal, as no memorandum of statement can be used unless it first appears that the memorandum was made at the time of the occurrence of the facts or contract-

231 ing of accounts in the said statement referred to.

A. I have.

Q. Can you state what amount of lands were charged to you on that account and at what rate?

A. The lands charged to me in that settlement were the lands charged to the Southern Inland Navigation and Improvement Company and those charged to Mrs. Gleason, as described in Exhibit "S,"

at the rate of twenty-five dollars per section. No other lands were charged to me in that statement.

Q. After deducting the amount of these lands from the total amount of coupons which had been placed to your credit what, if any, balance remained to your credit?

A. There was between five and six thousand dollars.

The question is objected to and asked subject to that objection, that it is illegal and irrelevant.

Q. Have you read the testimony given by S. B. Canover, at Tallahassee, in this cause?

A. I have.

Q. Is it true, as stated by Canover, that any of the coupons paid to him and covered by his receipts of file in this cause were punched or cancelled?

A. He is mistaken; there was none of them punched or cancelled.

Q. Who wrote the receipts which Canover signed?

A. Two of them were written by him and one of them by some one else—his clerk, I think. I had nothing to do with dictating the receipts or drawing them.

Q. You have stated in your testimony that Canover's receipts of Sept. 10th for forty thousand dollars in coupons included an
232 order of General Littlefield or the comptroller. Do you wish to make any connection to that testimony?

A. I find upon examination that the order of the comptroller was not included in that receipt. Mr. Canover's statement on that point is correct.

Q. Did you at any time or in any manner guarantee the bonds of the company or make any representations to Mr. Hepburn or to Mr. Bennett or to any other person that you or your property were or would be in any manner responsible for the bonds of the Southern Inland Navigation and Improvement Company?

Question objected to on the ground that it is irrelevant.

A. I never did.

Q. Have you at any time or in any manner waived your claim against the Southern Inland Navigation and Improvement Company for the full payment of the amount of the coupons paid by you for these lands out of the first proceeds of the company's bonds?

Question objected to on the ground that his said claim is not within the issue in this case.

A. I never have.

Witness, being cross-examined by solicitors for the trustees of the inland improvement fund, said:

Q. With whom was this contract to furnish coupons referred to made?

A. It was an understanding had with the president and directors. Dr. Moragne was the president.

Q. Was this agreement evidenced by any resolution or other corporate action of the company?

A. Not fully; there is a resolution passed by the board
233 giving me a lien upon the bonds for what the company owed me.

Witness refers to resolution on page 55 of the record of said company.

Q. Can you give any reason why that contract was not made a part of the records of the company?

A. We expected to sell the bonds immediately, and everybody was cognizant of the facts and it was omitted.

Q. Witness handed Exhibit "S" and his attention called to the alteration of the dates at the bottom of the 3rd page in the certificate and asked how he explains it.

A. This certificate was in the hands of the man who made out the deeds; when it came back into my hands it was as it is now.

Q. Are these lands mentioned in Exhibit "S" still held by your wife or her assigns?

A. Some are held by her and some by her assigns.

Q. What do you mean by the trustees treating the coupons deposited by you as your individual property?

A. They allowed me to use the proceeds of them. After I deposited the coupons of the Atlantic and Gulf Central railroad at that time — were not received for lands, and I went before different members of the board upon that subject, and they said I must produce satisfactory proof that these coupons were all right. I wrote to Mr. Littlefield on that subject. In all conversations they treated them as if they were my coupons.

Q. Did you not heretofore testify in this cause that these coupons were paid over to Mr. Canover in the purchase of the lands deeded to the Southern Inland Navigation and Improvement Company?

234 A. I have testified before and testify now that these coupons were paid over to Mr. Canover for the purchase of the lands deeded to the Southern Inland Navigation and Improvement Company.

Q. Was not your agreement with the company that you should pay the trustees the coupons for the company in purchase for their lands, and the company should repay you out of the proceeds of bonds or in some other way?

A. I have already stated what the conditions were. The agreement with the company was that I should furnish the necessary amount of coupons to pay for the lands granted, for which I was to receive from the company twenty-five dollars cash for each section to them conveyed and forty sections of land in addition thereto for my own use and benefit.

Q. Did you get that land?

A. I got a portion of it.

Q. Haven't you a suit pending against this company for what they owe you?

A. I have a suit pending for money advanced and expenses and services other than these heretofore testified to.

Q. What are those services?

A. Among other things, for expenses incurred in making surveys of land and making trips, in getting deeds recorded, steamboat hire in making examination of the river, and various other things.

Q. What were the services for which you were to receive land, as heretofore testified to?

A. I looked after making deeds, examining descriptions, the United States patents, getting deeds printed, reviewing it, correcting by the —, etc.

235 It is stipulated by counsel hereto that the certificate from the State land office at Tallahassee, showing the sale of certain lands embraced in the deed to the Southern Inland Navigation and Improvement Company and of the entries made by W. H. Gleason on his order, shall be received in evidence, and certified copies of the record of the board of trustees in relation to the matters at issue in either suit shall also be received in evidence, all of them subject to objections by defendant company hereby noted of relevancy.

W. H. GLEASON.

Sworn to and subscribed before me this 28th day of March, A. D. 1885.

D. U. FLETCHER, *Examiner.*

236 EXHIBIT "T."

OFFICE OF TREASURER,
TALLAHASSEE, FLORIDA, *Sept.* 10, 1870.

SIR: This is to certify that William H. Gleason has this day left on deposit with me forty thousand dollars in coupons of the different Florida railroads, said coupons to apply in the payment of lands purchased and to be purchased by him from the internal improvement fund for his own benefit, and the Southern Inland Navigation and Improvement Company for such lands as have been granted to said company by the board of internal improvement.

S. B. CANOVER,
Treasurer of Board Internal Improvement Fund.

This is to certify that Hon. Wm. H. Gleason has this day deposited with me fifteen thousand nine hundred and sixty-six dollars in coupons of the Florida, Atlantic and Gulf Central R. R. Co. bonds, said coupons to apply on purchase of lands by the Southern Inland Navigation and Improvement Company when the board of internal improvement shall have resolved to receive such coupons for public lands and when said company shall have selected and applied
237 for such public lands as have been granted them by the said board of internal improvement.

Tallahassee, Florida, April 9th, 1870.

S. B. CANOVER,
Treasurer B'd Internal Improvement, State of Fla.

Received, April 13th, in Florida R. R. coupons, eighteen hundred and sixteen $\frac{50}{100}$ dollars.

S. B. CANOVER,
Treasurer Board of Internal Improvement.

238 *Testimony.*

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES I. I. FUND OF FLORIDA.

JACKSONVILLE, FLORIDA, *March* 30, 1885.

GEO. A. EVERETT, Esq., being sworn on behalf of complainant, deposes and says:

Q. Will you state if you have heard the testimony of Mr. Gleason in this case given on the 28th instant?

A. I have.

Q. Will you state when and where you first met Mr. Gleason?

A. In the office of William H. Bennett, 14 Red Lion square, London, in the year 1877, I believe.

Q. Will you state, in short terms, what circumstances call to your mind that meeting?

A. I had previously been informed by General Roddy that a Governor Gleason was in negotiation with him and other parties for the purpose of raising means for the construction of a ship canal through Florida, and when I met Governor Gleason in Mr. Bennett's office he was pointed out to me as the gentleman with whom the negotiations were being made.

Q. At the conversations in New York city referred to by Mr. Gleason, what was stated as to the number of bonds issued or that could be issued?

A. In our first conversation there was no reference or pretense of any bonds having been issued save the fifty then in the hands
239 of Mr. Bennett as collateral. Gleason asked me to use these bonds as a means of instituting a suit, not for their foreclosure, but for the purpose of reinstating his company in the franchises, rights, and privileges, which I declined to do. My previous testimony given before Nettleton & Orr, commissioners, in New York, is strictly and entirely correct in regard to conversations therein alluded to. For the first three months after my arrival in New York Mr. Gleason continually stated that Mr. Bennett was the only person who held any outstanding bonds of the Southern Inland Navigation and Improvement Company for value, and he stated it in the presence of J. B. C. Drew and others. When I finally refused to use the bonds for any purpose save that of foreclosure I offered to surrender them, together with the note for three thousand pounds sterling,—Mr. Gleason on his payment of principal and interest of said note. This Gleason said he would accept and could raise the money if I would allow him time to go to Philadelphia, which I did. On his stated

return from Philadelphia he informed me that he had failed in raising the money, when I informed him that I should cause the bonds to be sold and apply the proceeds to the payment of the note. It was after this that he first informed me that the American Contracting Company were entitled to seven hundred and fifty bonds, but he never stated that the bonds had been issued to such American Contracting Company; he said they were in the hands of Sir Edward J. Reed, the agent of his company; he also wrote to Reed a letter, which he showed me, directing Reed——

240 Counsel for defendant company here objects to witness stating contents of written instrument and to the evidence on that ground.

to return the bonds to his company. I have not the letter.

Q. Will you state if Mr. Gleason ever mentioned to you, and in whose presence, the amount, if any, that had been expended by the American Contracting Company on the work of the Southern Inland Navigation and Improvement Company?

A. Very frequently in the presence of J. B. C. Drew, I think; also in the presence of F. W. Brooks and of William Fullerton he has told me that the company owed Allen for money expended and work done by the American Contracting Company the sum of from twenty to twenty-two thousand dollars. I have frequently repeated these statements of Gleason to Allen, and he never intimated that more than that amount was due. He is aware of these proceedings, and I have from time to time given him the various papers in the cause to peruse. I have informed him of the date now set for the hearing of the cause. After these bonds had been sold to Hepburn and these proceedings commenced by the Union Trust Company, Gleason had frequently told me that the amount of bonds to which the American Contracting Company were entitled was, first, fifty thousand; later he assured me that it was seven hundred and fifty thousand.

Q. Will you state what, if anything, you know as to the claim of Edward J. Reed against the Southern Inland Navigation and Improvement Company and from whom you obtained your information?

A. Gleason has repeatedly told me, both in New York, London, and Florida, that his company never received one dollar from
241 Reed, nor did they owe him either for money advanced or services performed. He has denounced Reed's claim as a robbery or attempt at robbery of his company, which he would resist to the last. He informed me in London, in the summer of 1883, that he was there to compel Reed to deliver these bonds back to the custody of his company. Later he informed me Reed had refused to do so.

Counsel for defendant company objects to all the foregoing testimony as illegal, irrelevant, and hearsay.

GEO. A. EVERETT.

Sworn to and subscribed before me this 30th day of March, A. D. 1885.

D. U. FLETCHER, *Examiner.*

[Endorsed:] Testimony taken by Fletcher, examiner.

242 In the U. S. Circuit Court, 5th Circuit, Northern District of Fla.

FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et al.*, Trustees of the Internal Improvement Fund, *et al.*, Defendants.

To the honorable the judges of the United States circuit court, 5th circuit, sitting in equity:

And now into court here comes the Southern Inland Navigation and Improvement Company, a corporation organized and existing by virtue of the laws of the State of Florida, by its solicitor, D. P. Holland, and, humbly petitioning, shows unto your honors—

1st. First. That this petition was created by an act entitled "An act to organize the Southern Inland Navigation and Improvement Company," approved the 28th July, 1868, the main object of the creation of this company being set forth in the preamble to the act, and the Legislature, being desirous to induce immigration and to provide a cheap and easy outlet for the citizens in the interior portions of the peninsula of Florida and the Indian river country by encouraging a system of inland navigation and communication, created
243 this corporation of the name aforesaid as one of its instruments for that purpose and gave to it certain powers, and especially the powers in the 5th section, and amongst others the right and authority to connect Indian river with the St. John's river by a canal, and to sue and be sued by the name aforesaid.

2nd. Second. That the State had for many years held a canal of this kind as one of its chief necessities of internal improvement, and provided aid and assistance for the construction thereof in an act entitled "An act to provide and encourage a liberal system of internal improvements in this State," approved January 6th, 1855, by which act all the swamp and overflowed lands granted to the State by the United States by an act of Congress of September 28th, 1850, were, together with another grant of 500,000 acres, granted to the State for internal improvement purposes by an act of Congress of 3rd March, A. D. 1845, and the proceeds thereof were vested in the trustees who are defendants to this suit and for the purposes of the act.

3rd. Third. That the State in the 4th section declared that a line of railway therein designated and "a canal from the waters of Indian river are (were) proper improvements to be aided from the internal improvement fund;" that the act designated the aid to be given to each of these two objects, to wit, a railway and a canal; and your petitioner avers and charges that the Legislature never intended

or contemplated by said act that any of the swamp or over-
244 flowed lands or any part thereof granted by the State by the act of Congress of 1850 should be appropriated or applied by the trustees in aid of said railways; but, upon the contrary, provided in the 16th section of the act the means of executing the contract between the State and the United States, by virtue of which these lands were granted by Congress, to wit (in the language of the Supreme Court of the United States), "the contract required the State to appropriate these lands granted to the purpose of reclaiming them," which the State did in the 16th section, requiring the trustees and making it mandatory on them that they shall hereafter "make such managements of the drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the internal improvement fund," etc.

Your petitioner avers and charges that the complainant and all other holders of railway bonds have no lien or charge or interest whatever in, to, or on that part of the said fund which is composed of said swamp and overflowed lands or the proceeds thereof, but that the lien of the complainants is confined to the said 500,000 acres or the proceeds thereof, and that said complainants have no right or title to question the acts of the said trustees or the contracts made by them relative to the said swamp and overflowed lands with any corporation or individual, but solely with regard to the disposition and management of the fund consisting of the said 500,000 acres or their proceeds, upon which there lien is, and not upon the swamp and overflowed lands or their proceeds.

4th. Fourth. That your petitioner entered into certain con-
245 tracts and agreements with said trustees relative to drainage and constructing a canal connecting St. John's river with Indian river and Indian river with Lake Worth and Lake Worth with Biscayue Bay by connecting various inlets by means of canals, which contracts were exclusively confined to the company purchasing the swamp and overflowed lands lying adjacent to the company's canals and river improvements, and in accordance with the duties and powers of the said trustees under the said section 16, one of said canals being the canal mentioned in the said 4th section of the act of 1855.

5th. Fifth. That the complainant filed his bill in this court as a holder of certain railway bonds and coupons issued under said act, but that the company was not made a party to said bill, but certain other corporations, called the Florida Canal and Inland Transportation Company and the Southern Inland Navigation Company, were attempted to be made parties defendant, and process of subpœna was prayed for against them, the same being different and distinct companies. The last-named company, having a name very similar to this petitioner, was a corporation created by the general corporation laws of this State, while your petitioner is a corporation created as aforesaid by special laws of 1868, and can only be sued by its proper corporate name.

That no subpœna has ever been issued against your petitioner, and — begs leave to refer to the subpœna and returns thereon of file

in this case; that your petitioner has never before appeared in this cause or to this suit either by its officers, counsel, or otherwise.

6th. Sixth. Yet, nevertheless, your petitioner shows unto your
246 honors that on the 4th day of December, A. D. 1873, the complainant obtained a decree, which, among other things, rescinded the contracts or agreements entered into by the trustees with your petitioner, and declared them to be null and void, and ordered "the lands undertaken to be conveyed or contracted to be conveyed shall be restored to the said internal improvement fund and be subjected to sale by the agents appointed by decree of this court," etc., and thus disposed of the rights of your petitioners without there being a subpœna ever issued against this company or your petitioner, by counsel or otherwise, appearing in the cause, which decree thus disposed of their property and rights without hearing or opportunity of being heard according to law and the practice of courts of equity.

7th. Seventh. That your petitioner paid on these said contracts with said trustees and in accordance with its provisions the sum of fifty-two thousand six hundred and forty-seven dollars in coupons of the several railway companies, for which the complainant's bill seeks to provide payment, all of which this petitioner will prove as this court may direct.

8th. Eighth. That your petitioner has expended more than sixty thousand dollars in the construction of dredge-boats, improvements, work, making the canals, and other expenditures, and issued bonds secured by deed of trust to the Union Trust Company of New York to the swamp and overflowed lands conveyed to this company by the said trustees of the internal improvement fund, which deed was
of record in every county in this State where the lands were
247 situated, said deeds being thus recorded under the laws of the State in April, A. D. 1871, and made contracts for the making and completing of said canals, to be paid for out of the proceeds arising from the sale of their bonds, and obtained faith and credit in addition to the company's own resources and moneys on the contracts and agreements made with said trustees, all of which several interests, rights, and property are destroyed and injured by the said decree thus made without this petitioner having been heard or having its day in court or the said Union Trust Company of New York being made a party to this suit.

9th. Ninth. Your petitioner, on information obtained from the office of commissioner of lands and immigration and from the surveyor general of the United States for the State of Florida, states that there is about fourteen millions of acres of swamp and overflowed lands which are or will be the property of the State under the provisions of the act of Congress of 28th September, A. D. 1850, ten millions of which have been confirmed or in the process of being confirmed by the United States land office and four millions of acres are partially surveyed.

That the contracts and agreements made by the trustees with the company would be, by drainage and opening up the country now

incapable of being cultivated, of vast benefit to the fund, without considering the public benefit derived from the canals.

10th. Tenth. That your petitioner has not made this application earlier because, first, it was well known that the district
248 judge, when presiding in the circuit court, would not vacate or disturb any order or decree made by the circuit judge or by the senior justice; that Judge Woods has not been here since said decree was rendered, and that until this special term there was no judge holding court before whom this motion could be earlier made.

11th. Eleventh. That your petitioner employed Theodore W. Brevard Jr., a solicitor of this court, to make this application now here made and to defend the rights of your petitioners, and that the president of this company was informed by said Brevard that he had during last winter given notice by letter to Mr. Jackson, the solicitor of complainant, that a motion would be made to the court to vacate the said decree and order as to your petitioner rendered on said 4th of December, 1873; that said president assisted said Brevard as their solicitor during last winter in preparing the necessary papers.

That hearing there was to be a special term to be held by Mr. Justice Bradley, the said president hastened from Washington, D. C., to Jacksonville to have the application made and telegraphed to the said Brevard, at Tallahassee, to meet him here. Mr. Brevard answered on the 7th inst. "that he had been at his plantation sick, and will come down if able;" and later, to wit, about 10 o'clock, he received from his solicitor another telegram, as follows: "If court certainly adjourns to-morrow let Holland prepare motion as well as possible; was utterly unable to get off, but if not too late will go to-morrow."

That the president of this company immediately thereon
249 employed D. P. Holland, who prepared during the night this application; that these circumstances prevented an earlier application to this court.

Wherefore your petitioner prays the court—

First. That it will vacate the said decree or so much of the same as relates to the petitioner and is above set forth, made December 4th, A. D. 1873.

Second. That your petitioners have leave to file such pleadings as they may be advised by counsel are necessary for the defence of the interests of this company.

Third. For such further order as to your honors shall seem meet and reasonable, the premises considered.

W. H. GLEASON.

D. P. HOLLAND, *Of Counsel.*

UNITED STATES OF AMERICA, *Northern District of Fla.*, } *ss:*

Before me personally came William H. Gleason, the president of the Southern Inland Navigation and Improvement Company, who, being first duly sworn, says the facts set forth as of his own knowl-

edge are true and those stated on information he believes to be true, and that the facts in the foregoing petition he gave and caused the aforesaid solicitors to give in the form of a petition in the manner and under the corporate name in which the petition is formed and as if the same was also an affidavit made by him personally; that
250 all the facts stated are of his own knowledge other than those stated on information.

WILLIAM H. GLEASON.

Sworn to and subscribed before me this 18th day of May, A. D. 1875.

PHILIP WALTER, *Clerk.*

251 Circuit Court of the U. S., Fifth Judicial Circuit, Northern District of Florida. In Equity.

FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et als.*, The Trustees of the Internal Improvement Fund of the State of Florida, *et als.*, Defendants.

To Henry R. Jackson, solicitor for Francis Vose.

SIR: Herewith service is made upon you of a copy of certain amendments to the petition of said company filed in said cause on the 18th day of May, 1875, together with copy of the original petition and suitable reference to the places where the said amendments are to be inserted.

252 Circuit Court of the U. S., Fifth Judicial Circuit, Northern District of Florida. In Equity.

FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et als.*, The Trustees of the Internal Improvement Fund of the State of Florida *et als.*, Defendants.

To the honorable the judges of the circuit court of the United States, fifth judicial circuit, for the northern district of Florida:

And now comes the Southern Inland Navigation and Improvement Company and amends its petition filed in this court heretofore, to wit, on the 18th day of May, A. D. 1875, as follows: By striking out in the said petition all of clause or paragraph "third" by numbering or designating as clause or paragraph "third" the fourth paragraph, a clause in said petition, and by writing the following words as the fourth clause, a paragraph thereof, viz:

The petitioner further shows that the contracts and agreements aforesaid made between the said The Trustees of the Internal Improvement Fund of the State of Florida and this petitioner were properly and legally made and entered into and cannot be disturbed;
253 that by the provisions of the act of the Legislature of the State of Florida, approved January 6, A. D. 1855, referred to

in the pleadings in this cause as "the internal improvement act of the State of Florida," it is stipulated and required that, as to the swamp and overflowed lands, the said trustees shall make arrangement for their drainage such as in their judgment shall be most advantageous to the internal improvement fund and the settlement and cultivation of the lands; and that the said trustees of the internal improvement fund had not only a right, but it was their duty to enter into and execute contracts having in view the purposes aforesaid, and the improvement of the trust property confided to their management and direction by drainage, as in the case of these contracts with this petitioner, and to employ to that end a portion of the trust estate in order to render more valuable the remainder; that by means of the contracts aforesaid it was the purpose of the parties thereto, and such would be and has, to a considerable extent, been already the effect that the value of the said fund — be enhanced and its efficiency greatly increased to meet and pay off all just indebtedness against it.

The petitioner shows further that the grants acquired by said company under the contracts aforesaid were made in the strict line of the trusts and purposes of the act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved September 28, 1850, under which act the lands conveyed to this petitioner were ceded to the State of Florida; that by the provisions of the said act it is stipulated and conditioned "that the proceeds of said
254 lands, whether from sale or direct appropriation in kind, shall be applied exclusively, so far as necessary, to the purpose of reclaiming the said lands by means of the levees and drains aforesaid. The petitioner shows that a principal result to be realized from the said contracts in view of the parties thereto at the time the same were considered and executed and the effect of the proposed contracts would necessarily be to improve the said fund by draining and rendering fit for cultivation and settlement a very large area of land habitually covered by water, which land, unless this or some similar work be carried out, must remain permanently unreclaimed and valueless.

The petitioner further shows that the complainant in this cause is the owner and holder of certain railroad bonds or coupons for interest thereon endorsed by the trustees of the internal improvement fund, and that he neither has nor can have any such lien, charge, or interest against or upon the said fund or that part thereof created by the said swamp and overflowed lands as entitles him to the relief prayed in this said bill against the petitioner; that he has no interest, charge, or lien against the said lands which is not secondary and subordinate to the interests and rights of the petitioner. The petitioner insists that no such interest, charge, or lien has been or could be given by the provisions of the said internal improvement act to the complainant, and it is submitted that even if the said act or any provision thereof might have the effect, either directly or by implication, to create such a lien in the complainant's favor as to make that portion of the said fund which was created by and out of the

255 lands granted by the act of Congress aforesaid and their proceeds primarily applicable to railroad purposes the same would be and is violative of the express conditions, stipulations, and trusts of said act of Congress, which provides that the lands acquired thereunder shall be applied exclusively, so far as necessary, to the purposes of reclaiming said lands by drainage as aforesaid, and the petitioner insists that any construction given to the complainant a right to subject the said fund primarily to the satisfaction of the securities held by him, which securities are coupons upon bonds issued as aforesaid in aid of railroad enterprises, would not only be injurious to the rights of the petitioner acquired under the said contracts in good faith, for value and without fraud of any character whatever, but be also subversive of the solemn trusts existing by virtue of the terms and conditions of the said act of Congress; that the said grant of swamp and overflowed lands could not have been accepted otherwise than with the conditions prescribed by the said act, and that, in point of fact, it was so accepted by the State of Florida; that the said grant and its acceptance constituted a contract between the United States and the State of Florida which is binding upon the said State and cannot be violated by any act of its Legislature.

D. P. HOLLAND,
T. W. BREVARD,
Of Counsel.

256 UNITED STATES OF AMERICA, *Northern Dist. of Fla.:*

Before the subscriber personally came William H. Gleason, president of the Southern Inland Navigation and Improvement Company, and he, being duly sworn, says that he has read the foregoing amendment to the petition of said company, filed on the 18th of May, A. D. 1875, in the case of Francis Vose, complainant, *vs.* Harrison Reed *et als.*, trustees of the internal improvement fund of the State of Florida, *et als.*, and that the matters, facts, and things set forth and alleged in said amendment are true, so far as they are set forth as of the knowledge of the petitioner, and so far as they are set forth upon information and belief he believes them to be true.

WILLIAM H. GLEASON.

Sworn to and subscribed before me this 2nd day of September, A. D. 1876.

PHILIP WALTER, *Clerk.*

257 Served a true copy of the within amendment to petition upon Wilkison Call, Esq., attorney for Geo. H. Williams, at Jacksonville, in the northern district of Fla., this the 23rd day of November, A. D. 1876.

S. CONANT,
U. S. Marshal.

Served a true copy of the within amendment to petition upon Henry R. Jackson, solicitor for Francis Vose, at Tallahassee, Florida, this the 4th day of Dec., A. D. 1876.

S. CONANT,
U. S. Marshal,
By S. TITBETTS,
Dept. U. S. Marshal.

Served a true copy of the within amendment to petition upon C. P. Cooper, Esq., attorney for Bradley Martin, at Jacksonville, within the northern district of Fla., this the 4th day of Oct., 1876.

S. CONANT,
U. S. Marshal.

Served a true copy of the within amendment to petition upon James M. Baker, Esq., attorney for M. S. Garvin *et al.*, at Jacksonville, within the northern district of Florida, this the 4th day of Oct., A. D. 1876.

S. CONANT,
U. S. Marshal.

Served a true copy of the within amendment to petition upon Francis Vose, at Jacksonville, within the northern district of Florida, this the 23rd day of November, A. D. 1876.

S. CONANT,
U. S. Marshal.

258 In the Circuit Court of the U. S. for the Northern District of Florida. In Equity.

FRANCIS VOSE, Complainant,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

Answer of Francis Vose to the petition of the Southern Inland Navigation and Improvement Company, allowed to be filed in the above-entitled cause.

This respondent, praying the benefit of the reservations usually made by defendants in their answers, in courts of chancery, in answer to so much of the said petition as he is advised it is necessary for him to make answer unto, says that the said petitioner was made a party defendant to the original bill filed by this respondent in the above-entitled cause; that at the date of the filing of the said bill the said petitioner was a corporation existing under the name of the "Southern Inland Navigation and Improvement Company;" that N. H. Morague was the president of the said corporation at the time of said filing; that he was not the president of any other corporation whatsoever existing under the laws of the State of Florida and in the State of Florida, as this respondent is informed and believes, or existing anywhere else; that at the date of said filing and subsequently

thereto, and until the 5th day of June, in the year eighteen
259 hundred and seventy-one, there existed no corporation in the State of Florida or, as this respondent is informed and believes, anywhere else of name assimulated to that of the Southern Inland Navigation and Improvement Company; that in the original bill of complaint filed by this respondent and on the fifth page thereof the following language is used: "And your orator further shows that on the 28th of July, 1868, the said trustees, by resolution of that date, attempted to secure to the said Southern Inland Navigation and Improvement Company forty thousand acres or thereabouts of the said trust lands;" that on the tenth page of the said original bill the following language is used: "Have not the said trustees pledged or donated a large quantity of said trust lands to the Southern Inland Navigation and Improvement Company?" that on the thirteenth page of the said original bill the following words are used: "The Southern Inland Navigation and Improvement Company will answer interrogatories four and six;" that in said interrogatory number six, on the eleventh page of said bill, the following language is used: "How much of the swamp or overflowed lands has been drained by the said trustees or by their immediate predecessors, who are defendants named in the bill, or by the said Hubbard L. Hart, or the said The Florida Canal and Inland Transportation Company or the said The Southern Inland Navigation and Improvement Company?"

This respondent avers that it is quite impossible to read the said bill without discovering that the corporation referred to and described by the pleader was the Southern Inland Navigation and Improvement Company.

This respondent further shows that, although the subpœna
260 as prayed by the said bill was addressed to the said corporation and the Southern Inland Navigation and Improvement Company, it was nevertheless duly and regularly served upon the said N. H. Moragué, who was at the time president as aforesaid of the said The Southern Inland Navigation and Improvement Company and of no other company or corporation whatsoever, as this respondent is informed and believes and does now accordingly aver.

This respondent humbly insists that, there being no other corporation of name assimulating to that of the Southern Inland Navigation and Improvement Company, and the said Moragué being president of no other company, the service of the subpœna addressed to the Southern Inland Navigation and Improvement Company and served upon him was sufficient notice to the said defendant corporation to appear and make answer, more specially in view of the fact, apparent upon the face of the bill itself, that the corporation referred to therein was the said The Southern Inland Navigation and Improvement Company.

This respondent further avers, as establishing conclusively that the said Moragué and the said corporation of which he was president were well advised of this fact and were attempting to evade their obligations and duties in the premises, that on the said 5th of June, A. D. 1871, the said N. H. Moragué, with W. H. Hunt, W.

H. Gleason, and Charles L. Mathews, all of whom were copartners under the amended charter of the said The Southern Inland Navigation and Improvement Company, procured a charter for themselves under the name of the Southern Inland Navigation Company by filing the requisite papers in the office of the secre-
261 tary of the State of Florida, in accordance with the general law at that time existing for the creation of corporations. This respondent avers that the preceding was a mere pretence and contrivance on the part of the said Moragne and his associates; that it was never the design of the said nominal corporation to use the charter thus obtained for the practical exercise of their corporate franchise in any manner whatsoever; that in fact they have not applied said franchise to any practical use whatsoever, and this respondent believes, and, so believing, avers, the said corporation being all of them identified with the said The Southern Inland Navigation and Improvement Company, that the only object of seeking and procuring the said charter was to aid in and to promote their fraudulent purpose of escaping the decree rendered in the said cause of this respondent already mentioned, to which the said corporation had been made a party defendant by full notice given as aforesaid.

This respondent further says that at the December term, 1871, of the circuit court of the United States for the northern district of Florida the said cause was referred to A. Doggett, Esq., master in chancery, to inquire into and make a report as to the various matters involved in the said litigation; among others to inquire into and to state where conveyances or contracts to convey had been entered into by the trustees of the internal improvement fund for the purpose and consideration of internal improvement; to state the number of acres of land originally swamp and overflowed which had been actually drained under or because of such conveyances or contracts, specifying the location of all such drained
262 land; that in obedience to the said order the said master did take a large amount of testimony, and among it testimony relating to the contract of the conveyance entered into with the said corporation and what had been done by the said corporation in discharge of its obligation under the said contract in the way of draining any of the said swamp or overflowed lands; that, as the result of said inquiry, it appeared that nothing whatever had been done by the said company in the way of what could be properly styled drainage, and subsequently, at the December term, 1873, of the said circuit court of the United States his honor Judge Woods, with all of the pleadings and the testimony before him, "ordered, adjudged, and decreed that the contracts or agreements entered into by the trustees of the internal improvement fund with the corporation known as the Southern Inland Navigation and Improvement Company be rescinded, and the same are hereby declared to be null and void and the lands undertaken to be conveyed or contracted to be conveyed shall be restored to the said internal improvement fund and be subject to sale by the agents appointed by decree of this court."

Further answering, this respondent says that after decrees, final in their character so far as regarded action on the part of the said the trustees of the internal improvement fund, had been rendered by the said the circuit court of the United States in the said cause of this respondent against the said trustees and others—that is to say, during the month of March, A. D. 1873, the said the trustees undertook to pass resolutions extending the time of the completion of the improvements contracted to be made by the said The
263 Southern Inland Navigation and Improvement Company, and in consideration of which public lands were to be conveyed to the said corporation by the said trustees and did extend it to the first day of January, 1877. This respondent avers that these resolutions, so adopted by the said trustees, were in contempt of the decrees and action of the said circuit court in the said cause, to which the said trustees were parties defendant and in which injunctional orders were in full force against them; but this respondent shows further that the time of extension has been exhausted; that unless it be again extended by action of the said trustees assuring them to have the power to act, the correctness of which assumption this respondent denies, the corporation has no longer such interest, or even such pretense of interest, in any of the lands which constitute the internal improvement fund of Florida as it is necessary to sustain its petition or to entitle it to any such relief as it prays therein, and this respondent hereby submits that no action whatsoever can be properly taken in the way of bringing the said corporation, assuring that it was not a party to the said original cause and concluded by the decrees rendered therein, unto the said suit until the said the trustees of the internal improvement fund shall have been made parties defendant to the said petition and shall have been heard in regard thereto.

And this respondent, having made answer to the said petition, prays to be hence dismissed with his reasonable costs and charges, etc.

264 UNITED STATES OF AMERICA,
Southern Dist. of Georgia:

You, Francis Vose, do solemnly swear that the statements contained in the foregoing answer, so far as they relate to your own act and deed, are true; so far as they relate to the act and deed of any other person you believe them to be true, so help you God.

F. VOSE.

Sworn to and subscribed before me this 16th day of February, 1877.

JAS. McPHERSON,
U. S. Cir. C't Com.

[Endorsed:] Ans. of Francis Vose to pet. of S. I. N. & I. Co.

265 TALLAHASSEE, FLORIDA, *Feb'y* 13, 1869.

The board met.

The following communication was received from the Southern Inland Navigation and Improvement Company:

To the honorable the trustees of the internal improvement fund of the State of Florida:

The Southern Inland Navigation and Improvement Company do respectfully request and ask aid from the internal improvement fund for the purpose of carrying out and into effect the powers which are granted to them by their charter. The section of country through which these improvements pass, from Biscayne Bay to the head of Halifax river, is an almost uninhabited country, although this portion of the State has been open for settlement for the last twenty-five years, and as settlements have repeatedly been made and abandoned, from time to time, in consequence of there being no outlet or egress for its products, the State has vast quantities of land, amounting in the aggregate to over three millions of acres, which will be benefited and opened up — settlement and immigration by this company. The lands are wholly unsaleble to the State. In the event of the completion of an inland navigation from Biscayne Bay to the St. John's river these lands would be enhanced at least to two dollars and fifty cents per acre, aside from the impetus that would be given to immigration and the wealth which immigration brings into every community.

We submit to your honorable body a schedule of lands, all of which will be benefited by the improvement.

266 The company would ask that the honorable board convey to the said company the odd-numbered sections of the swamp and overflowed lands in the following-named townships, to wit: Townships eleven (11), twelve (12), thirteen (13), fourteen (14), and fifteen (15) of ranges twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32) east; townships sixteen (16), seventeen (17), and eighteen (18) of ranges twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), and thirty-four (34) east; townships nineteen (19), twenty (20), and twenty-one (21) of ranges thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), and thirty-four (34) east; townships twenty-one (21) of ranges thirty-three, thirty-four (34), and thirty-five (35) east; townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six, twenty-seven (27), and twenty-eight of ranges thirty-four (34), thirty-five (35), thirty-six (36), and thirty-seven east; townships twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), and thirty-three of ranges thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), and thirty-nine (39); townships thirty-four (34), thirty-five (35), thirty-six (36), and thirty-seven (37) of ranges thirty-nine (39), forty (40), forty-one (41), and forty-two (42) east. The construction of the canal from the St. John's to the Indian river can be used during the seasons of inundation for the purpose of drainage, and will reclaim thousands of acres of lands that are nearly worthless upon the

headwaters of the St. John's river; it will also, during the seasons of flood, save from overflow immense quantities of land on the St. John's river below the place of the intersection of the canal with the St. John's; the deepening of Indian river and the removal of bars will accelerate
267 the movement of its waters which flow from its tributaries, and will help reclaim and prevent overflow of the lands upon the St. Lucie and Jupiter rivers; consequently an appropriation of lands from the aggregate body for this purpose will add to the value of the remaining lands belonging to the funds, and will increase their value to more than double their present value of the whole. We would ask that the lands be confirmed to the company and titles made from time to time as the work progressed, as follows, to wit: For every dredge-boat built and put in operation and kept in operation on said work for six months, seventy-two (72) sections of said swamp and overflowed lands, to be selected from said odd-numbered sections; for dredging and making navigable Elbow creek to Jupiter inlet, thirty-six of the said odd-numbered sections of swamp and overflowed lands; for dredging and making navigable from Elbow creek to Dummits, thirty-six (36) of the odd-numbered sections of swamp and overflowed lands; for dredging and making navigable from the outlet of Lake Harney to Lake Washington, seventy-two (72) of the odd-numbered sections of the said swamp and overflowed lands; for cutting canal from the St. John's to the Indian river, two hundred (200) of the odd-numbered sections of said swamp and overflowed lands; for every lock built and constructed, thirty-six (36) of the odd-numbered sections of the said swamp and overflowed lands; for cutting the canal from Indian river to Lake Worth, seventy-two (72) of the odd-numbered sections of said swamp and overflowed lands; for cutting canal from Lake Worth to Hillsboro' inlet, seventy-two (72) odd-numbered sections of the said swamp and overflowed lands; for cutting from Hillsboro' inlet to New
268 river, thirty-six (36) sections of the odd numbers of the said swamp and overflowed lands; cutting canal from New river to Biscayne Bay, seventy-two (72) of the odd-numbered sections of the said swamp and overflowed lands; for cutting the canal from Indian river to Mosquito lagoon, thirty-six (36) odd-numbered sections of the said swamp and overflowed lands; for dredging and clearing out Mosquito river to the head of Halifax river, thirty-six (36) odd-numbered sections of the said swamp and overflowed lands; for dredging and making an inside steamboat channel from Biscayne Bay to Key West, thirty-six (36) odd-numbered sections of the said swamp and overflowed lands, and when the work is completed to a continuous inland steamboat navigation from the St. John's river to Key West the lands due hereunder to said company shall be conveyed thereto; in the meantime the board of trustees to issue floats, to be located by said company or its assigns within the limits of territory above described, to be located on the odd sections thereof; the trustees of the internal improvement fund to sell the odd-numbered sections within the limits conceded until the same are selected by

the company and hold the funds subject to the order of the company as the work progresses.

All of the aforesaid canals to be cut and the streams to be dredged shall be so cut and dredged as to admit steamboats of twenty-five (25) feet beam, and all locks to be so constructed as to admit steamboats of twenty-five (25) feet breadth and one hundred (100) feet in length.

The said company, upon the acceptance of this proposition, to have no claims whatsoever upon lands heretofore conveyed
269 by the board of trustees of the internal improvement fund to other parties. The lands in said odd-numbered sections shall be confirmed or conveyed at the times aforesaid only upon the payment by the said company therefor to the said trustees the sum of twenty-five dollars for each and every section of six hundred and forty acres. All dredge-boats built shall be constructed at a cost of not less than thirteen thousand dollars; otherwise not to be considered as a dredge-boat.

(Signed) N. H. MORAGNE, *President.*
(Signed) CHARLES L. MATHER, *Sec'y & Treas.*
(Signed) W. H. GLEASON, *Chief Engineer.*

The above proposition was accepted by the board with the modification that the "Southern Inland Navigation and Improvement Company," in selecting the lands, shall select first from the northern townships of the swamp and overflowed lands in the odd-numbered sections in each township — are exhausted.

The board then adjourned.

FRANK W. WEBSTER, *Secretary.*

270 TALLAHASSEE, FLORIDA, *June* 21, 1869.

From N. H. Moragne and Wm. H. Gleason on behalf of Southern Inland Navigation and Improvement Company, asking $1,600 for purchase of a dredge-boat.

271 JANUARY 13TH, 1870.

A proposition from the Southern Inland Navigation and Improvement Company was presented and the consideration thereof was deferred.

Upon motion, the board adjourned to 10 a. m., on January 14.

A true record.

Attest: J. S. ADAMS, *Secretary.*

JANUARY 14TH, 1870.

The proposition of the Southern Inland Navigation and Improvement Company was called up and read as follows:

To the honorable board of trustees of the internal improvement fund:

We most respectfully request that your hon. board make a further concession to the "Southern Inland Navigation and Improvement

Company" to aid in the construction and completion of the inland navigation from Fernandina to Key West by a grant of the even-numbered sections in the same townships in which you have hitherto conceded the odd-numbered sections, and also in townships numbers 29, 30, 31, 32, 33 of range 34 east. We ask this upon the same conditions as were attached to the former grant.

N. H. MORAGNE,
President, etc.

After quite an extended discussion and consideration Mr. Adams offered the following resolution:

That in consideration of the increased expenditure com-
272 templated in the report of the engineer of the Southern Inland Navigation and Improvement Company on account of the increasing both the width and depth of the proposed can a this board will grant the lands applied for in the request of the company, and that the *city* general be desired to prepare for execution by this board and by the company a contract by which the proposed enlargement of the capacity of the canal as contemplated in the report of the engineer shall be secured by making its *contraction* in accordance with the report a condition of the contract.

Pending the consideration of the resolution evidence was received from N. H. Moragne and W. H. Gleason tending to show that the completion of the canal would drain a very large extent of country entirely without and beyond the lands sought, and the report of the engineer of the company showing a fall of thirteen feet between Lake Washington and Indian river was read, and thereupon the resolution was adopted, Messrs. Reed, Gamble, Canover, and Adams voting aye and Mr. Webster voting no and Mr. Meek, at his own request, being excused from voting.

Leave was unanimously granted Mr. Meek to file his views on the subject.

The following evidence was filed January 14, 1870, in connection with the above:

We, the undersigned, are acquainted with the St. John's river and the country adjacent. From the knowledge and information that we have of that country we know that a canal cut from Lake Washington to Indian river will drain, reclaim, and prevent from over-
flow not only lands at the head of the St. John's river, but
273 large quantities of land as far north as tide water and many miles to the southward and *miles to the southward and* westward.

We will state that the tide does not affect the river above Palatka.

N. H. MORAGNE, *Pres., etc.*
W. H. GLEASON, *Engineer.*
M. A. WILLIAMS.

274 TALLAHASSEE, FLORIDA, *Feb.* 3, 1870.

The Southern Inland Navigation Company, through Senator Moragne, presented the following proposition:

TALLAHASSEE, *Feb.* 2, 1870.

To the hon. the trustees of the internal improvement fund of the State of Florida:

Whereas the Southern Inland Navigation and Improvement Company find it difficult to negotiate with capitalists for the construction of said company's work with the payment thereof in land, but can if a privilege be granted for issuing bonds thereon: Now, therefore, the company pray your honorable body to deed and convey said lands in fee simple to said company by paying existing liens thereon, with the right to execute a mortgage to secure bonds at the rate of $1.25 per acre, bearing seven per cent. interest per annum, payable semi-annually in the city of New York, and becoming due 30 years from the date of said bonds, or the proceeds thereof to be deposited with the comptroller, to be held by him or be deposited in some New York bank or trust company for the benefit of the contractor, his associates or assigns, and to be paid to said contractor, his associates or assigns, upon the estimate of the chief engineer of said company, in proportion as the same would be if paid in lands.

N. H. MORAGNE, *President.*

After discussion and consideration it was unanimously
275 resolved, That we see nothing objectionable in the proposition of the Southern Inland Navigation and Improvement Company, and, in the event that the arrangement heretofore made in the disposal of the swamp and overflowed lands for the encouragement of drainage, improvement, and settlement are not embarrassed by the legislative action of the present session, the board will accept and close with the proposition made by the company.

276 TALLAHASSEE, *April 13th*, 1870.

On motion, the following preamble and resolution was adopted:

Whereas it is agreed by and between the Southern Inland Navigation Co. & the N. Y. Lumber, Land and Improvement Company to accommodate the possible purposes of the colonists of each company by an exchange of the certificates for land or floats of such company at par from time to time as the conveniences of the company may require: Therefore it is by the trustees resolved, That such an exchange of floats or certificates, if made, will meet the approval of this board, and is hereby sanctioned by them.

Mr. Merritt then for the New York company was permitted to have recorded the following agreement:

In consideration of the sum of one dollar to the Southern Inland Navigation and Improvement Company in hand paid by the New York and Florida Lumber, Land and Improvement Company, the receipt whereof is hereby acknowledged, the said Southern Inland Navigation and Improvement Company agrees and is hereby bound upon demand from time to time to issue floats or certificates to said New York and Florida L., L. and I. Company entitling the holders thereof to such number of acres as may be demanded not exceed-

ing in the aggregate two hundred thousand acres (200,000) of the land conceded to the said Southern Inland Navigation and Improvement Company by the trustees of the internal improvement fund of the State of Florida or that may hereafter be conceded said company by said trustees, and in payment thereof to receive floats or certificates issued by said New York and Florida L., L. and I. Company entitling the holders thereof to a like amount of the swamp and overflowed lands conceded or that may be conceded to said New York and Florida L., L. and I. Company *of* said trustees.

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[Seal S. I. N. & I. Co.]

N. H. MORAGNE, *President.*

W. H. Gleason, in behalf of the Southern Inland Navigation and Improvement Company, presented for the consideration and adoption of the board a resolution, which, after consideration, discussion, and amendment, is in the following words:

Resolved, That the Southern Inland Navigation and Improvement Company are thereby authorized to enter and obtain deeds for the lands granted to them by this board by paying the amounts due thereon and to mortgage and bind the same for the benefit of the contractors and for the purpose of completing the work; the bonds, when issued, to be made convertible into lands, at the option of the holders, and the form thereof to be approved by the board, and the said bonds shall be deposited with the Union Trust Company of New York city for sale and be sold under the supervision of Willis Gaylord, contractor, and the proceeds arising from the sale of such bonds to be deposited with some bank or trust company in the city of New York, to be designated by the trustees of the internal improvement fund, and the same to be drawn from time to time as the work progresses upon estimates to be made by the chief engineer of the said Southern Inland and Improvement Company; all checks and drafts issued to said contractors for payment of work done to be approved by the comptroller, and in case the work is not completed by the first day of January, 1873, the bonds remaining unsold shall be returned to the trustees of the internal improvement fund, and the trustees may locate such remaining bonds upon the lands unsold *pro rata*—that is to say, any given proportion of the whole amount of the bonds that may at the expiration of the time limited remain unsold shall suffice for the location of an equal proportion of the lands conceded, and it is understood and agreed that the bonds issued shall not be sold at an average price that shall cause a conversion into land at less than seventy-five cents per acre.

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And it is also provided that no deed shall issue to the company until the form of the bonds is approved, as provided *alone*, and the deeds for the whole land shall be delivered to the company when a certificate of the deposit of the bonds with the Union Trust Company is exhibited to this board.

In taking the question upon the resolution it was ordered that absent members of the board be permitted to record their votes.

The resolution was then adopted, the votes in the affirmative being that of Webster, Adams, Conover, and Governor Reed ; in the negative those of Gamble and Meek.

Upon motion, Mr. Webster or any other trustee was authorized to examine the lands applied for by Myron L. Mickles, with instructions to report to the board.

279 FEBRUARY 4TH, 1870.

Dr. Moragne, pres. of Southern Inland Navigation and Improvement Company, was present and desired a reconsideration of the action of the board upon his proposition of preceding day, but without action this board adjourned.

TALLAHASSEE, *June 2nd*, 1870.

Dr. N. H. Moragne then appeared and, requesting the delivery of titles to lands claimed by Southern Inland Navigation Company, proffered payment therefor pursuant to the terms of the contract made with said company.

Upon motion, the board adjourned to June 3rd at 10½ a. m.

280 TALLAHASSEE, *September* 19, 1870.

Hon. W. H. Gleason, as representing the Southern Inland Navigation and Improvement Company, then presented a written form of bond proposed to be issued by said company, and requested the approval of the form of said bond as required by the resolution adopted by said board on the thirteenth day of April, A. D. 1870.

Whereupon, by unanimous vote, it was resolved—

That we approve of the form of the bond presented to us for approval by the Southern Inland Navigation and Improvement Company, and that the secretary of this board retain a copy for future reference, and that the National Trust Company of the city of New York is hereby made the depository of all moneys received from the sale of the bonds to be issued by the Southern Inland Navigation and Improvement Company.

281 JACKSONVILLE, *March* 30, 1871.

Hon. W. H. Gleason, in behalf of the Southern Inland Navigation and Improvement Company, then presented a request in writing under the seal of said company requesting the trustees to convey to said company certain lands hitherto conveyed by the trustees to W. H. Gleason upon certain conditions, said lands to be conveyed to said company under the same conditions covering the previous concessions to said company, and upon the back of said petition is endorsed the consent to the granting thereof by W. H. Gleason.

Upon motion, said petition was received, considered, and ordered filed; and, by unanimous vote, the following resolution was adopted, with the accompanying preamble:

Whereas Wm. H. Gleason has assigned all of his right, title, and interest to the Southern Inland Navigation and Improvement Company to certain lands granted to him by the board by a resolution

adopted on the 4th day of February, A. D. 1869; and whereas the said Southern Inland Navigation and Improvement Company by its board of directors, through its secretary, requests that the said concession or resolution be so amended that the title be vested in said corporation:

Now, therefore, it is resolved, That the trustees of the internal improvement fund will convey to the Southern Inland Navigation and Improvement Company all of the lands donated and granted to the State of Florida by the act of Congress of the United States
282 September 20th, A. D. 1850, situated in townships 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, ranges 41, 42, and 43 east, upon the completion of the inland navigation from Jupiter inlet to Biscayne, upon the same terms and conditions as the lands heretofore granted to the Southern Inland Navigation and Improvement Company.

And Mr. Gleason also presented his petition in writing, which was considered and ordered filed, and is in the words and figures following:

To the hon. the trustees of the internal improvement fund:

Whereas the comptroller is inimical to the improvements sought to be made by the Southern Inland Navigation and Improvement Company, the said company respectfully request a modification of a previous resolution passed by your honorable board so that checks issued to pay the contractor be countersigned by the treasurer of the board instead of the comptroller, and to conform as near as may be to the draft of a resolution hereto annexed;

Resolved, That all monies deposited in the National Trust Company of the city of New York to the credit of the Southern Inland Navigation and Improvement Company shall be drawn out and paid to the contractor only upon the checks of the treasurer of the Southern Inland Navigation and Improvement Company, countersigned by the treasurer of the board and upon the certificate of the engineer of the Southern Inland Navigation and Improvement Company that the contractor is entitled to the amount in accordance with his contract with the company.
283 Upon motion the resolution was adopted by unanimous vote.

TALLAHASSEE, *April 4th*, 1872.

A petition was then filed from the Southern Inland Navigation and Improvement Company asking an exchange of lands.

The consideration of the petition was postponed.

TALLAHASSEE, FLORIDA, *March* 4, '73.

Mr. William H. Gleason appeared before the board on behalf of the Southern Inland Navigation and Improvement Company and requested an extension of time to enable said company to complete their work.

And thereupon Mr. Cocke offered the following resolutions:

Resolved, That the time for the completion of improvements to be made by the Southern Inland Navigation and Improvement

Company is hereby extended until the first day of January, A. D. 1877, provided that the improvement of the St. John's river shall be perfected from Lake Harney to Lake Washington and the canal cut connecting Lake Washington with Indian river, so that steamboats can run from Jacksonville to Jupiter inlet via Lake Washington and Indian river, on or before May 1st, 1875.

284 Resolved, 2nd, That this extension is granted upon the assumption *prima facie* that the contracts and agreements heretofore entered into by the trustees of the internal improvement fund with said company are legal and regular, and not thereby acknowledging the validity thereof nor binding themselves by any illegal act of the former board, but expressly resenting all right to except to all such contracts or agreements as though the above resolution had not been adopted.

Upon the adoption of the resolutions the vote was—yeas, Messrs. Foster, Cocke, and Eagan—3; nays, none.

So the resolution was adopted.

285 TALLAHASSEE, FLA., *April* 8, 1872.

Letters were received from Francis Vose, Esq., dated March 7 and April 7, making enquiry respecting the employment of the attorney general as counsel for the board and the retaining by him of associate counsel, and also suggesting action to be taken by the board to bring into market the swamp lands conveyed to the Southern Inland Navigation and Improvement Company and those reserved from sale for the benefit of the Jacksonville and St. Augustine Railway Company.

Mr. Congill offered the following resolution, which was unanimously adopted:

Resolved, That the secretary be directed to acknowledge the receipt of Mr. Vose's communications, and that he be informed that it is true that, according to our best judgment — discretion, we have employed the attorney general as counsel of the board, but he has retained no associate counsel, and that we will take into consideration his suggestion in relation to the lands.

286 TALLAHASSEE, FLA., *Dec.* 29, 1873.

Mr. Congill also offered the following resolutions, which were unanimously adopted, viz.:

Resolved, That the lands previously granted to the Jacksonville and St. Augustine Railway Company to aid in the construction of said road, and which have been withheld from market be, and the same are hereby, restored to market and offered for sale, and the lands undertaken to be conveyed, or contracted to be conveyed, to the Southern Inland Navigation and Improvement Company are also restored to market and offered for sale, the said lands having been restored by virtue of a decree of the U. S. circuit court for the northern district of Florida.

STATE OF FLORIDA, *Leon County:*

I, William D. Barnes, secretary of the board of trustees of the internal improvement fund of the State of Florida, do hereby certify that the above are true copies from the minutes of said board, of which minutes I am the custodian.

W. D. BARNES,
Secretary B'd Trustees I. I. Fund, Fla.

287 It is agreed by and between counsel representing the parties in the case of Union Trust Company *vs.* Southern Inland Navigation and Improvement Company and trustees of internal improvement fund of Florida that the foregoing pages contain the testimony taken in this cause by F. M. Meyers, as examiner, on 5th day of January, 1885.

WILLIAM FULLERTON,
C. P. & J. C. COOPER,
For Complainants.
ED. M. CHENEY,
Solicitor for Defendants.
FLEMING & DANIEL,
Solicitors for Trustees.

[Endorsed:] Testimony taken at Tallahassee by F. T. Meyers, examiner.

288 GREENOUGH, Adm'r, *vs.* THE TRUSTEES *et al.*

In the Matter of the Petition of W. H. GLEASON.

Wm. H. Gleason, being duly sworn, deposes and says:

My name is William H. Gleason. I am the petitioner in this matter; in the year 1870 the board of trustees of the internal improvement fund made a contract with the Southern Inland Navigation Company to sell their certain land, aggregating upwards of 2 million acres, which the company proposed to pay for with the indebtedness against the fund. I was the financial agent of the company, and as such made arrangements with Gen. M. I. Littlefield to furnish the coupons for that purpose, of which there is a record on the books of the company. (Witness here reads from the records of the Southern Inland Navigation *Company* & Improvement Company, page No. 27:) Resolved, That, for and in consideration of M. I. Littlefield furnishing coupons for the purposes of paying the trustees I. I. fund the amount due from the company upon lands to be conveyed by the said board to the company, the company, for and in consideration of the aforesaid coupons, will pay to the said M. S. Littlefield bonds of the company to be issued upon said lands at the rate of 80 per cent. upon the par value thereof, the said bonds to be and remain in the custody of the company until sold by the agents of the company with the other bonds to be issued, and the proceeds
289 thereof to be paid to the said M. S. Littlefield out of the 1st moneys received from the sale of said bonds. At the time I

was one of the directors of the company, and I am now president of the company, and this book read from is in my custody, and is the official records of the company. (Such book now put in evidence.) General Littlefield was unable to furnish the coupons, and did not carry out that arrangement. After Littlefield's failure to carry out the contract the company made an arrangement with me to furnish the coupons for the purposes as expressed in that resolution. The conditions were that the company should reimburse me for all moneys that I might advance for the purchase of the lands or for any other purpose whatever, for which I was to have a first lien on the bonds. About that time I was appointed a financial agent of the company. Under that arrangement I furnished the coupons to the company to the amount of $56,782.50. I paid the first amount on April 9th, 1870—$15,966. The second payment was April 13, 1870—$816.50. The third payment was Sept. 10, 1870—$40,000.

It is agreed between counsel that the original receipts not being accessible at present on account of the absence of Mr. Bassnett, in whose safe they are, that the copies annexed to the petition may be used in lieu of the originals until the latter shall be produced, which shall be done on the hearing, or before, if counsel for defendant shall call for them.

In consideration of the amount of coupons paid by me there was a conveyance of lands to the Southern Inland Naviga-
290 tion and Improvement Company. They are the lands made by the deed of the trustees of the Southern Inland Navigation and Improvement Company, made Feb. 10, 1871, for 1,360,300.65 acres. I have never received from the company or any one else any pay for the coupons, as the company was unable to negotiate its bonds on account of a decree made in the Vose case annulling all contracts (decree made Dec. 4th, 1873) made with the Southern Inland Navigation and Improvement Company. Some of the coupons were those of the P. & G. R. R., and some were the Florida R. R., and some of the F. A. & G. C. R. R. and the Tall R. R. Company's.

Cross:

Q. How long have you been president of this company?

A. I was elected January 9th, 1874, as shown by page 57 of the book in evidence. The coupons were all past due when paid in. I am not able to state the dates of their maturity. I got the coupons from the different persons. I got some from General M. S. Littlefield, some from General John Varnum, some from Col. T. W. Brevard, of Tallahassee; don't recolleet any one else. I was buying small lots of coupons from different parties all the time. There was no punched or defaced coupons among them. I do not recollect how many I got from Brevard. I got $10,000 from Varnum and $16,966 from Littlefield, which is specified in the receipt of April 9th, 1870. I had from Littlefield, in the form of an order on the trustees of the
I. I. fund, $12.369.77, in addition to the $16,966. The history of
291 this order is as follows: When the P. & G. R. R. Company

was purchased the road was paid for, as I understand, by the bonds of the P. G. R. R. Company; the coupons attached to the bonds were payable January and July. When those bonds were surrendered by the purchasers to the trustees the July coupons were attached, and Littlefield claimed that he was entitled to so much of the coupons as represented the interest from July 1st, 1869, to date of sale. The board of trustees recognized the order, and that amount is included in the coupons which I claim pay for and is included in the $40,000 receipt. I do not know what became of those coupons. I did not make any list of these coupons. I delivered then all these coupons to Simon B. Conover, treas. of the trustees of the int. improvement fund of Florida, and they were accepted by him as payment on the lands at the time that these receipts were given.

Redirect:

It was after the acceptance of these coupons and in consideration thereof that the trustees made the deed to these lands to the company.

WILLIAM H. GLEASON.

[Endorsed:] Testimony of W. H. Gleason, taken before Philip Walter, special master.

292 In the U. S. Circuit Court, Northern District of Fla. In Equity.

FRANCIS VOSE *et al.*

vs.

TRUSTEES OF INTERNAL IMPROVEMENT FUND OF FLORIDA *et al.*

Appeal of Trustees Internal Improvement Fund of Florida from decrees of Honorable Thomas Settle, district judge, sitting as judge of circuit court of United States, 5th judicial circuit, northern district of Florida, eastern division, at Jacksonville, Florida.

In the Fifth Circuit Court of the United States for the Northern District of Florida.

To the judges of the United States circuit court for the northern district of Florida:

Francis Vose, a resident and citizen of the State of New York, brings this his bill of complaint against Harrison Reed, who is the Governor of the State of Florida; Robert H. Gamble, who is the comptroller of the State; Almon R. Meek, who is the attorney general of said State; Frank W. Webster, who is the surveyor general and register of public lands of said State; Simon B. Canover, who is the treasurer of said State; John S. Adams, who is commissioner general of immigration of said State, the last six named persons being trustees, as hereinafter mentioned, and citizens of said State; the Trustees of the Internal Improvement Fund of Florida, a corporation created by the act of the General Assembly of said

State, located within and a citizen of the same; David S.
293 Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, late trustees, as hereinafter described, and all of them residents and citizens of said State; the Pensacola and Louisville Railroad Company, the Florida Canal and Inland Transportation Company, the Southern Inland Navigation Company, all of said last-named companies being corporations created by acts of said General Assembly of Florida and residents and citizens of said State; the New York and Florida Lumber, Land and Improvement Company, a corporatian created under the laws of the State of New York, but designated to be located and to do business in said State of Florida, and actually located and doing business therein, and therefore a resident and citizen thereof; Myron S. Mickles, the agent of said last-named company, a resident and citizen of said State, and Hubbard L. Hart, a resident and citizen of said State; and thereupon your orator complains and says that on the sixth day of January, in the year 1855, "An act to provide for and encourage a liberal system of internal improvements in this State" was approved by the Governor of Florida, by which said act certain lands and proceeds from sales of the same were set apart and declared a distinct and separate fund, to be called the internal improvement fund of the State of Florida, and to be strictly applied according to the provisions of said act, and for the purpose of assuring such application the said lands and the funds arising from the sales thereof, after paying the necessary expenses of selection, management, and sale, were irrevocably vested in five trustees, to wit, in the Governor of the State, the treasurer, the attorney general, and the register of public lands, of the State of Florida, and their suc-
294 cessors in office, to hold the same in trust for the uses and purposes thereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same; to invest surplus moneys arising therefrom and the surplus interest accruing from such investments, and to pay out of said fund, agreeable to the provisions of said act, the interest from time to time as it might become due on the bonds to be issued by the different railroad companies under authority of said act, and with further power to receive and demand semi-annually after each separate line of railroad is completed the sum of one-half of one per cent. on the entire amount of bonds issued by said railroad company as a sinking fund for the payment of said bonds as they should fall due.

And your orator further shews that by the fourth section of said act two lines of railroad were indicated as proper improvements to be aided from internal improvement fund, one of them being a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Keys, in East Florida, and that by the fifth section of said act several railroads already chartered or which might thereafter be chartered and portion of whose authorized routes should be within the line laid down in section four should have the right of constructing such portion of the line on giving notice to the said trustees of the internal improve-

ment fund of their full acceptance of the provisions of said act, etc., and that by section eight of said act it was further provided that on completion of said railway in manner and form set forth
295 said companies should be authorized to issue coupon bonds as described therein at the rate of eight thousand dollars per mile for the purchase and delivery of iron, rails, spikes, plates, and chains, and that by section nine of said act certain duties are imposed upon such railroad companies, the comptroller of public accounts, and the State treasurer, which should perfect said bonds, secure the payment of the coupons or interest upon the same, thus making them salable in the markets of the world in accordance with the comprehensive design of said legislation; all which will more fully appear by reference to a copy of said act, hereto annexed and marked Exhibit H, and which your orator prays may be taken as part of this his bill of complaint with the usual liberty of reference.

And your orator further shews that on the first day of February, 1869, an act was approved constituting the commissioner of immigration of the State of Florida a member *ex officio* of the board of trustees of the internal improvement fund aforesaid.

And your orator further shews that the Florida Railroad Company, at that time already organized and chartered by the Legislature of Florida, during the early part of the year 1855 did, in accordance with the provisions of the act first aforesaid, give notice to the Trustees of the Internal Improvement Fund of the full acceptance by it of the provisions of said act for so much for the lines of railroad as lay between Amelia Island, on the Atlantic, and the waters of Tampa Bay, in South Florida, with the extension
296 to Cedar Keys, in East Florida, the work on so much of said lines as lay between Amelia Island and the proper point for the branching of the extension to Cedar Keys, together with the said extension, to be commenced immediately, and the line from said points to the waters of Tampa Bay to be commenced as soon as chartered privileges therefor could be obtained.

And your orator further shows that on the fourteenth day of December, 1855, an act amendatory of their said charter so as to extend the said pivileges was approved, giving to the said company the power to construct the railroad from Amelia Island, on the Atlantic, with the extension to Cedar Keys, in East Florida; that said company undertook to construct said lines of railroad accordingly, and gave due notice thereof to the said The Trustees of the Internal Improvement Fund.

And your orator further shows that, in accordance with said section eight and section nine of the act first aforesaid, the said Florida Railroad Company did issue a large number of coupon bonds, which were recorded by the said comptroller of public accounts and the record certified on each bond, each of which bonds, as your orator is informed and believes, was dated the first day of March, in the year 1856, and conditioned for the payment of $1,000 on the first day of March, in the year 1891, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first

days of March and September in each year, which semi-annual interest was represented by coupons attached to said bonds and payable
297 to bearer in the city of New York; that one hundred and ninety-five of said bonds were, on or about the first day of November, in the year 1858, issued and delivered by the said Florida Railroad Company to Vose, Livingston & Co., a copartnership firm in the city of New York, in the State of New York, composed of your orator and Edward Livingston and Charles L. Perkins, on account of an indebtedness to said firm for iron furnished by the said firm to the said The Florida Railroad Company and used in the building and for the purposes of its railroad; that the said firm was dissolved on or about the first day of May, in the year 1858, and all the interests of the said Edward Livingston and Charles L. Perkins in the said bonds were transferred by them to and became and were and still are vested in your orator, and he individually became and still is the owner and holder of the same, and that there is owing and unpaid thereon the entire principal thereof and also the entire interest accrued upon the same, except the coupons payable and which were paid in the year 1860.

And your orator further shows that the said The Florida Railroad Company failed to provide the interest on the bonds issued by it as aforesaid and the sum of one per cent. per annum as a sinking fund, as required by the provisions of the aforesaid act, and had been so in default for a period of about three years, when, on or about the sixth day of October, in the year 1866, the said The Trustees of the Internal Improvement Fund took into their possession the railroad of the said The Florida Railroad Company and all the property
298 of the said company, and advertised the same for sale at public auction, at the town of Gainesville, in the State of Florida, on the first day of November, in the year 1866, and on that day, at the place last mentioned, it was announced as the terms of the sale that the purchaser should be bound to continue the payment of one-half of one per cent. semi-annually to the sinking fund until all the outstanding bonds should be discharged, and that said sale was subject to all the conditions of the aforesaid act; and the said railroad and all the said property were then and there exposed for sale and were sold for the sum of $323,400, and a deed therefor was executed by said trustees to one Edward N. Dickerson and his associates.

And your orator further shows that with the said sum of $323,400, and without providing for the payment in full of the coupons on said bonds, which were already past due, the said trustees decided to purchase the outstanding bonds of said company, paying therefor the entire purchase-money, equally divided among the whole number of bonds outstanding, which would give to each bondholder two hundred dollars; that they actually purchased and paid for eleven hundred and twenty-eight bonds, which left in their hands a balance of $97,800 to be applied to the purchase of the remaining bonds, provided the holders thereof were willing to sell them at the aforesaid rate or to be invested in the sinking fund; that in November, 1866, they deposited this sum in the hands of Moses Taylor, Esq., of the city of New York, to be used by him in conformity with

a resolution of said the trustees, etc., adopted on the 7th day of November, in the year 1866, in substance as follows:

299 Resolved, That the $97,800 in hand, arising from the sale of the Florida railroad, be deposited on call in the City Bank of New York, and that Moses Taylor be appointed confidential agent of this board for the purpose of taking up the first-mortgage bonds of the Florida Railroad Company, with instructions to purchase the same, including the past-due coupons, at not more than twenty per cent. upon the principal of said bonds.

And your orator further shows that other large sums of money have from time to time been received by the said The Trustees of the Internal Improvement Fund of the State of Florida under and by virtue of the provisions of the aforesaid act, but that they have wholly failed to apply the same to the payment of the interest or past-due coupons on said bonds; that instead thereof they have misappropriated and wasted more than $200,000 of the same by loaning it upon or otherwise applying it to the purchase of or investment in worthless securities called Confederate scrip or bonds, which Confederate scrip are of no value whatever, and the whole amount of said fund represented thereby is a total loss; that in or shortly prior to the year 1866 they purchased, with $41,000 of the same bonds of the State of Florida, at par, the bonds and credit of that State, then being greatly below par, which fact was well known to the said trustees, and which bonds still remain unpaid; that on the 11th of March, in the year 1867, the said trustees adopted a resolution to lend to the State of Florida $45,000 of the same in certificates

300 to the treasurer of the said State, which said certificates had been previously received by said board upon loans of the funds or monies of the said internal improvement fund, all of which said transactions were in violation of law and of the duty of said defendant; that in June, in the year 1867, the said trustees adopted a further resolution that so much of the money placed in the hands of Moses Taylor as aforesaid as should not be applied to the purchase of said bonds prior to the first day of August then following should be invested in the sinking fund aforesaid, but your orator is informed and believes the said resolution was not carried into effect and that the money remains in deposit as before; that in December, 1867, the said trustees adopted a resolution authorizing the president of said board to invest, out of the fund then in the hands of the said Taylor, a sufficient amount to purchase a certain bond of the State of Florida, payable to said Dickerson, for the principal sum of $21,000, and also to invest a sufficient amount to purchase or pay for the interest on the same at a time when the bonds and credit of said State were greatly below par.

And your orator further shows that the said trustees have in their possession or under their control other funds and securities to a considerable amount belonging to the said internal improvement fund; that there are sums owing by said The Florida Railway Company and other parties to the defendant, The Trustees of the Internal Improvement Fund of Florida, and liabilities thereto of members of said board of trustees, who participated in the illegal and wrongful

transactions aforesaid, and that the said trustees neglect and
301 refuse to enforce the collection and payment thereof, but as to the amount and character of said last-mentioned funds, securities, sums, and liabilities your orator is without information sufficiently accurate to enable him to say more than that, to the best of his belief, they are large.

Your orator further shows that the said trustees have illegally and fraudulently misplaced and wasted and are now fraudulently misplacing and wasting the lands which were vested in them by the said act of January 6th, 1885; that on the — day of —— they donated to the Pensacola and Louisville Railway Company all the swamp and overflowed lands for three miles on both sides of the line of said railroad; that on the 18th day of June, 1868, they passed a resolution to the effect that the Florida Canal and Inland Transportation Company should be permitted, upon completion of said canal to Jupiter inlet, to purchase of said board at five cents per acre one hundred and fifty thousand acres of swamp and overflowed land belonging to said internal improvement fund, and on the completion of said canal from Fernandina to St. Augustine the further quantity of one hundred thousand acres of the lands last specified at the said nominal price of five cents per acre; that on the 26th day of October, A. D. 1867, they passed a resolution to the effect that they would grant to Hubbard L. Hart the swamp and overflowed and internal improvement lands embraced in the odd-numbered sections lying within ten miles of the Oclawaha river and the lakes supplying said river as follows, to wit: For every expenditure made by said Hart in removing the obstructions to the navigation of said river *and* the said Hart should receive the
302 amount thereof in lands at the price of the lands aforesaid then prevailing, provided the said expenditure should not exceed the sum of twenty thousand dollars, and although, as your orator is informed, the whole expenditure of said Hart in removing such obstructions did not exceed fifteen hundred dollars, yet they, the said trustees, have ordered lands to be conveyed to him under said resolution to the amount of twenty thousand dollars in value at the prevailing prices, and the said Hart has actually received thirty thousand acres of the said lands from the said trustees.

And your orator further shows that on the 28th of July, 1868, the said trustees, by resolution of that date, attempted to secure to the said Southern Inland Navigation and Improvement Company forty thousand acres, or thereabouts, of the said trust lands, and that about the 1st of March, 1870, they entered into an agreement with the said The New York and Florida Lumber, Land and Improvement Company by which they undertook to convey one million one hundred thousand acres of the same for the nominal price of ten cents an acre, and that this vast domain was and is to be selected from the best and most valuable of the said trust lands; all which will more fully appear by reference to a copy of said agreement, hereto annexed, marked Exhibit B, which your orator prays may be taken as part of his bill, with the usual liberty of reference.

And your orator further shows that the said last-mentioned com-

pany was incorporated by the Legislature of the State of New York in the month of July, 1869; that it is composed of specula-
303 tors, having no real capital of their own; that they are not residents of the State of Florida nor permanently interested in the improvement or prosperity of that State; that they have an office or place of business in the city of Jacksonville, but that your orator, in frequent applications thereat, has wholly failed to find any recognized agent there, although your orator has reason to believe that one Mickles is the agent of the said company.

And your orator further shows that the said company receiving the said lands at the said nominal price are now actually offering them for sale in the markets of the world at from three to ten dollars per acre; all which will more — appear by reference to a pamphlet entitled "Florida," published by the said company, a copy of which is hereto annexed, marked Exhibit C, which your orator prays may be taken as a part of this his bill of complaint, with the usual liberty of reference.

And your orator shows unto your honors that all these acts and omissions of the said the trustees, whether in misappropriating said monies, leaving unpaid the said past-due coupons, or in neglecting to collect the amounts due to the said fund, or in thus conveying *to* the million and hundreds of thousands of acres — the real estate vested in them strictly and solely for the uses of their trust, the said trustees have violated the law of said trust and have grossly defrauded your orator and all others similarly situated with himself, and who he respectfully prays may be allowed to come in as parties complainant to this bill, should they desire to do so, upon equitable terms; and as a result of some of these gross and fraudulent viola-
304 tions of duty by the said trustees your orator further shows that the Legislature of the State of Florida, at the first session thereof under the constitution of said State of 1868, created divers other corporations, some ten or twelve in number, and your orator is informed and believes that the said corporations last specified were created under the expectation, derived from the said previous illegal acts of the said trustees, that the said trustees would convey to them also large quantities of said trust lands on like fraudulent terms, and this your orator has good reason to fear will be done unless they, the said trustees, be restrained by the order of this honorable court.

And your orator further alleges that the other parties defendant named in this bill, both private persons and corporations, *are* due and full notice that the acts and omissions of the said trustees, as hereinbefore recited, were illegal and fraudulent, and that by reason of said gross frauds the said pledges, agreements, donations, sales, and conveyances hereinbefore recited are null and void as against your orator and others, the parties defrauded thereby, and that where, by virtue of the same, said parties defendant have gone into actual possession of any said trust lands they hold them as trustees for the payment of said past-due coupons upon the said bonds.

And your orator further shows that the said the trustees have failed to receive and demand from the said the present owners of the said

the Florida railroad, and the said the purchasers of said road have failed to pay semi-annually the sum of one-half of one per
305 cent. on the entire amount of the bonds issued by the said The Florida Railroad Company, as required by the 2nd section of the said act of January 6th, 1855, thereby creating a sinking fund as contemplated by said act for the eventual payment of the principal of said bonds.

And your orator further shows that the amount of the entire principal of said bonds held by him is one hundred and ninety-five thousand dollars, and the amount of the past-due coupons, with interest upon the same, is about two hundred thousand dollars; that he has made repeated complaints to the said trustees of their illegal and fraudulent acts and omissions hereinbefore recited; that he has repeatedly called upon them to come to an account of the said trust fund, in which he is mainly and so largely interested; that he has repeatedly requested them to pay to him the amount of the overdue coupons so held by him as aforesaid; that on the 20th day of May, in the year 1868, he addressed and sent a letter to Hon. D. S. Walker, president of the board of trustees of the said internal improvement fund, which was about that time received by the said Walker, of which the following is a copy, to wit:

NEW YORK, *May 20th*, 1881.

Hon. D. S. Walker, president trustees internal improvement fund of Fla.

SIR: I have received your note dated 1st March. You are aware that part of the coupons held by me, which are guaranteed by the internal improvement fund, became due as far back as 1861, and the rest in regular succession every six months from that time,
306 and as I am informed that the trustees have paid to other parties coupons guaranteed by the fund, which fell due long subsequent to some of mine, I protest against the action of the trustees in thus postponing the payments to which I am entitled and giving preference to others not entitled to it, and desire hereby to notify you, and through you the other trustees, that I shall hold you and them personally responsible to me for damage thus done to my rights.

I beg also to notify you, and through you the trustees, that I am the holder of 195 bonds of $1,000 each of the Florida Railroad Company, guaranteed by the internal improvement fund of the State of Florida, which are wholly unsatisfied, and that I call upon the trustees to perform the duty incumbent upon them under the law of exacting from that company, or whoever may be in possession of its roads under a sale claimed to have been made by the trustees or otherwise, the due and regular payment to the sinking fund of one-half of one per cent. every six months upon the whole amount of bonds originally issued to the Florida Railroad Company under the guarantee of the fund, whether such bonds be now outstanding or not, including any arrears of such payments due from the Florida Railroad Company, or whomsoever may now be in possession of the road. As I hold so large a portion of the bonds outstanding, the

importance to me of the due and regular exactions of the payments required by the law to be made to the sinking fund is very obvious. I beg to notify you and the trustees that if they fail to perform their duty of exacting these payments I shall look to them personally for the damage thereby resulting to me.

I desire also to inform you that I am ready and willing
307 to sell to the trustees, to be taken by them by way of investment of funds in their hands, bonds and coupons held by me, for which the fund is responsible, at rates more favorable than those at which, as I am informed, you have taken other securities for which the fund is not responsible.

I remain, respectfully, your obedient servant,

F. VOSE.

And that on the first day of December, in the year 1868, your orator addressed a letter to the defendant, Harrison Reed, who was then Governor of Florida and president of the trustees of the said internal improvement fund, which soon after was received by him, of which the following is a copy, to wit:

TALLAHASSEE, *December 1st*, 1868.

Hon. Harrison Reed, president trustees internal improvement fund:

SIR: I addressed a communication to your board on the 20th of May last. Not receiving any reply, you will please take notice that you will be held personally liable for any loss arising from the application of any trust property or funds in your charge to any purpose whatever, except the payment, in their regular order, of the overdue obligations for which the trust itself is liable; also for any loss from the sale of lands or other assets of the trust at a nominal price, or for payments taken in Confederate or State scrip or anything but legal United States currency; also for any loss
308 arising from neglect to enforce the obligations of the several railroads accepting the provisions of the internal improvement acts.

I remain, respectfully, your obedient servant,

F. VOSE.

And your orator had well hoped that the said the trustees and the said defendants would have complied with such his reasonable demands and requests, as in conscience and equity they ought to have done; but now so it is, may it please your honors, that the said the trustees, combining and confederating with the said parties, private and corporate, hereinbefore named and described, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to change them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, they, the said trustees, absolutely refused and fail to comply with such requests and demands, and at times they pretend that many of the misapplications of the funds and misappropriations and wastings of the lands belonging to their trust, which are hereinbe-

fore set out, resulted from the acts of their predecessors, for which they are in nowise accountable, whereas your orator charges that under said act of June 6th, 1855, the said trustees constitute a corporation; that by succession they are, in their corporate capacity, accountable for the acts of the said corporation, and that the trust funds in their hands are equitable assets to meet the just claim of you orator based upon acts of corporate misfeasance or non-feasance at any
309 time occurring; but your orator admits that the individual members of said corporation, by violation of their trust, may have rendered themselves also personally liable in damage to him, and he has accordingly made some of the predecessors of the said the trustees parties defendant to this bill for the purpose of praying a decree to that effect against them; and at other times they pretend that in pledging, donating, and conveying immense amounts of lands to divers persons and corporations for nominal prices they are in the legitimate discharge of their duties under the law creating their trust; that by far the largest amount of lands so vested in them were "swamp and overflowed lands" granted to the State of Florida with the condition that monies raised from the sale of any portion of the same should be first applied to draining the remainder; that said monies therefore could not be legally diverted to the payment in the first place of the interest upon railroad bonds, and that the various dispositions which they have made of the lands in question have been in the legitimate interest of their improvement by draining, whereas your orator charges that in said dispositions the said trustees have drawn no distinction whatsoever between the said swamp lands and the five hundred thousand acres of land which were granted to the State of Florida expressly for the general purpose of internal improvement without condition or qualification; that said last-mentioned lands, though fewer in acres, are by far the most valuable; that the said pledges or guarantees of said lands, parties defendant to this bill, and especially the said corporation chartered in New York for the improvement of Florida, having an unlimited right of selection,
310 either have possessed or, unless they be restrained, will possess themselves of all the said last-mentioned lands, or of all the highest, driest, and choicest of the said swamp lands; that in thus passing and attempting to pass out of themselves the title to vast tracts of the said trust domain the said trustees are fraudulently abdicating the trust duties imposed upon them by the said act of January 6th, 1855, and more especially by the 16th section of the same, to which your orator prays to refer in full; that the said trustees, in addition to the vast tracts donated, pledged, and granted as hereinbefore charged, have themselves been and are now actually engaged in selecting for themselves and allowing their associates to select from the said trust lands at nominal or inadequate prices, receiving in payment for the same scrip or warrants of the State of Florida which was below par or coupons of said bonds which are junior in date and in claim to those held by your orator; that the pretense that said disposition of said lands looks to the drainage of the same is altogether fraudulent, such dispositions having been made for the benefit solely of unscrupulous speculators; and your

orator charges further that in the passage of said act of January 6th, 1855, the Governor of Florida had in full view the condition annexed to said grant to said swamp lands, and claimed to be and actually was in the legitimate fulfillment of its duty in the premises; that in the development of the State by the railway system which was then contemplated the end—the "reclaiming" of the swamp lands—would be most rapidly and securely attained; that there were no restrictions placed upon the exercise of the said government of discretionary power as
311 to the mode of effecting that object, the moneys resulting from the sales of portions of said lands to be "exclusively" to the purpose in view only "as far as" was in its judgment "necessary;" that the whole subject was exhaustively considered before the passage of said act of January 6th, 1855, all of which will more fully appear from "Report of the internal improvement board of Florida submitted by the Governor to both houses of the General Assembly, on Friday, December 22nd, 1854," a copy of which is hereunto annexed, marked Exhibit D, which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference, as a sequence of which report the said act was adopted; and your orator charges that in fact the results so ardently desired have been thereby to a very great extent accomplished; that the faith of the State thus tendered by solemn legislative enactment was accepted; that the bonds whose coupons were thus to be paid by a board of trustees composed of the highest State functionaries, *ex officio* vested with an irrevocable title to a vast domain, to be held by them primarily liable to the purchasers and holders of said bonds for such payment, were really received in exchange for iron rails, spikes, chains, and etc., which now lie upon two long lines of railway traversing the State from the Atlantic waters to those of the Gulf; and at other times they pretend that the course that they are pursuing in the management of said internal improvement fund will enhance the value of said fund, and thus be of ultimate benefit to your orator, whereas your orator charges that they have been and are daily wasting said fund; that they are rapidly destroying the security of your
312 orator for the payment of his coupons and bonds, and that unless he be relieved by the restraining power of this court they will inflict upon him irreparable loss; and at other times they pretend that they have never refused to return proper accounts and reports of their actings and doings with reference to the said trust funds and lands, whereas your orator charges that for the last two years they have refused to give any account or to make any report whatsoever; that the amount which should have been collected by them from the said purchasers of the said Florida railroad on account of said sinking fund is from sixty to seventy thousand dollars; that the net amount from the sales of lands, judging from the general average of sales made by their predecessors in the trust, should be from one to two hundred thousand dollars; that of this large aggregate sum the said trustees have given no account whatever, although it was the habit of their predecessors to make yearly reports of their actings and doings and monthly reports of sales, receipts, and disburse-

ments; and your orator charges that their neglect in this respect had become so manifest and scandalous as to have invoked the following comment of the Governor of Florida in his annual message, under date of January 7th, 1869: "The reports of the surveyor general and the board of trustees of the internal improvement fund show the affairs of that department in rather a confused and unsatisfactory condition," etc., which will appear *to* a copy of said message, hereto annexed and marked Exhibit E, which your orator prays may be taken as a part and parcel of this his bill of complaint, with the usual liberty of reference; that as one of the results of their failure to keep regular accounts
313 of their receipts and disbursements and to make proper returns of the same they have and are in position to apply trust funds in their hands to the payment of coupons, without regard to their time as fixed by priority of dates in falling due; all of which is in gross violation of sections 2, 3, and 13 of said act of January 6, 1855, which required said trustees to pay first the coupons oldest, past due, and others in the order in which they had fallen due, the language of said act being that they should "pay out of said fund the interest" upon said bonds "from time to time as it may become due;" and your orator further charges that they are also in position fraudulently to purchase and are actually purchasing coupons not yet properly payable, and also coupons which your orator is informed and believes have been already paid, but which have been reissued and are fraudulently outstanding, making said purchases at nominal prices and giving said coupons in exchange for lands belonging to said trust fund at great profit to themselves; all of which said actings, doings, and pretenses of the said the trustees and the said the other parties defendant to this bill and their confederates tend to the manifest injury and irreparable wrong of your orator.

To the end, therefore, that the said trustees and their said confederates may, upon their several and respective corporal oaths, full, free, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their re-
314 spective information, hearsay, and belief, and more especially that they may answer and set forth—

1. Whether the first twelve pages of Exhibit A *and* are not a true copy of the act "To provide for and encourage a liberal system of internal improvement in this State," approved by the Governor of Florida on January 6th, 1855? Do not the remaining pages of said exhibit contain true copies of Florida acts of legislation? Is not Exhibit B a true copy of the resolution passed by the trustees of the internal improvement fund in response to the New York and Florida Lumber, Land and Improvement Company? Is not Exhibit C a true copy of a pamphlet published by the said last-named company? Is not Exhibit D a true copy of the report of the internal improvement board of Florida in manner and form as it purports

to be? Are not Exhibits E and F true copies of the annual messages of Governor Harrison Reed to the Legislature of Florida?

2. Were not the said defendants, David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith the immediate predecessors of the acting trustees in the execution of the trust created by said act of January 6th, 1865? Is not the New York and Florida Lumber, Land and Improvement Company a New York corporation? Has it not an office and an agent in Jacksonville, Florida? Is not the defendant, Myron S. Mickles, its agent in Florida; if not, who is? Has it other agents in Florida? If yea, name them. What was the amount of capital of said company at the date of its incorporation? What is the amount of its active capital now? In what does that capital consist; if in money, where or with whom is that
315 money deposited? How many acres of land has it selected and located in Florida under the agreement set out in Exhibit B? What amounts has it paid to said trustees of such located lands, and when, where, and by whom were the payments made? Were they made in money or in scrip, or what; if in scrip or otherwise, was such scrip or paper taken at par or below par? Were the lands so selected from the internal improvement lands, which consisted originally of 500,000 acres, or from the swamp & overflowed lands? If from either or from both, specify the number of acres from either and from each, giving their localities. Is not said company offering said selected lands at from three to ten dollars per acre? Has it drained or undertaken to drain any of such lands? If yea, state how many acres, the location of the same, the character, cost, and extent of such drainage. Has not Myron S. Mickles, both before and after commencement of his agency, selected, located, and received of such trust lands for himself personally; if yea, how many acres, and of what class of lands?

3. Have not said trustees conveyed to Hubbard L. Hart lands to the amount and value stated on the bill; if not, how much have they conveyed, and at what estimated prices? What was the character and the amount of work done by the said Hart? Who examined that work and made a report as to its character and value? How much money did said Hart expend upon it? Did he furnish an account and vouchers showing payments; if yea, let them be attached to defendants' answer; if nay, upon whose representation as to the value of said work and the amount of said expenditures was the final settlement made? Were any of the lands so granted to said Hart selected from the said internal improvement lands
316 originally transferred for that specific purpose by Congress; if yea, what was the number of acres so granted to said Hart, and at what estimated price did he take them?

4. Have not the said trustees pledged or donated a large quantity of said trust lands to the Southern Inland Navigation and Internal Improvement Company, as stated in the bill? How many acres have — so pledged or donated? What is the value of the land so donated? How many acres were selected from the original internal improvement lands? What is the value of the last-named lands per acre?

5. Have not the said defendants so pledged or donated large quantities of said lands to the said The Pensacola and Louisville Railroad Company and to the Florida Canal and Inland Transportation Company? How many acres have they so donated, and how many of these were selected from the swamp and overflowed lands, and how many from the original internal improvement lands, and what is the value of each per acre?

6. How many of said swamp or overflowed lands has been drained by the said trustees or by their immediate predecessors, who are defendants named in this bill, or by the said Hubbard L. Hart, or the said The Florida Canal and Inland Transportation Company, or *that* the said The Southern Inland Navigation Company, or the said The Pensacola and Louisville Railroad Company? Where are such drained lands located, and what has been the cost of such drainage?

7. How much was received per annum by the said trustees' predecessors named in this bill for sales of said trust lands? How
317 much per annum by said trustees themselves? What was the entire amount of said trust lands that came into the hands of said predecessors? How many acres of swamp land? How many of original internal improvement land? How many acres of each of these classes of land did they turn over to their said successors, and how many acres of each class still remain in the hands of the latter subject to the execution of their trust? Did not the said predecessors keep regular accounts of their actings and doings, receipts and disbursements, and make regular monthly reports of the same? Does not the pamphlet entitled "Documents," accompanying the Governor's message hereto appended and marked Exhibit G, contain in its pages a true copy of the report made by said trustees under the dates therein specified, and is it not a fair specimen of the reports which the said trustees were accustomed to make? Have the incumbent trustees made any such report at any time? Have they made any report at all, whether as regards the disposition of lands or as regards their own receipts and disbursements of funds? If yea, let copies of all such reports be appended to their answer.

8. Did not the said trustees' predecessors named in the bill receive from the sale of the said the Florida railroad the sum of $323,400; if nay, how much did they receive, for how much was said road sold, and in what form were payments therefor made and what became of the money so received? Was not a portion, and how much of the same, deposited in the hands of Moses Taylor, of New York city; if yea, what has become of that sum?

9. Did not the said trustees invest $200,000 and over of monies
318 belonging to said trust fund in Confederate bonds or scrip, as stated in the bill, and has not the same been a total loss? Did they not purchase a bond or bonds of the State of Florida to the amount of more than $41,000 with monies belonging to said trust fund, and did they not buy these bonds at their par value and at a time when the bonds and credit of the said State were greatly below par? Where are the said bond or bonds; have they or any

portion of them been paid; if yea, what has become of the money? Did not the said trustees, in December, 1867, or at some other —, and, if yea, what other time, authorize the president of the said trustees to invest a portion of said trust funds, at that time under the control of Moses Taylor or some other person, in the purchase of a certain bond of the State of Florida, payable to Edward N. Dickerson, for the principal sum of $21,000, and to pay the interest thereof in manner and form as stated in the bill? Was not the said bond bought at par value, and were not the bonds and credit of the State greatly below par at the time; what has become of said bonds, and, if paid, what has become of the money? Did not said defendants lend other and large amounts of said trust fund to the State of Florida upon the security set out in the bill? Look upon the printed bill or note annexed hereto and marked Exhibit H and say whether the trustees have not received and do not receive such notes in payment for trust lands; what is its value in national currency?

10. Have not said trustees now in their actual possession large amounts of money, choses in action, and securities belonging — said trust fund? Let them specify the amount of said money or
319 scrip, or choses in action, or securities, giving an accurate description of the same.

And that the said defendants may come to a full and detailed account of all monies and property whatsoever which have at any time come into their own hands — in the hands of their predecessors named herein as defendants in the execution of their trust, more especially that they may make proper accounting of assets, receipts, and disbursements since the month of June, 1868, and that the said trustees may be required by the order and decree of this court to pay to your orator the amount which is due upon his said coupons; to protect from waste the fund in money, choses in action, land, and other property liable for the payment of said coupons and bonds which are not yet due; to collect from the said The Florida Railroad Company and its present owners one-half of one per cent. on the entire amount of bonds issued by said last-named company under the provisions of said act of January 6, 1855, and thus to provide a sinking fund for the eventual payment of the bonds held by your orator and others in accordance with its requirements; that for the better securing these ends *to* the said trustees may be enjoined and restrained from selling or donating or disposing of said lands otherwise than in strict accordance with the provisions of the sixteenth section of said act of 1855, fixing the prices, making arrangements for the drainage, and allowing pre-emptions of the same under all the restrictions of that section; that they may be restrained and enjoined from selling said lands for scrip of any kind or for aught else than the current money of the United States; that they may be enjoined and restrained from lending or invest-
320 ing, appropriating, disposing of, or using any of the monies or property of the said trust fund except in payment of the coupons of the bonds issued by railroads in accordance with the provisions of said act of January 6, 1855; that — may be enjoined and

restrained from paying said coupons in any other mode than in the order of priority fixed by the language of section 2, section 3, and section 13 of said act, paying first such as first became due and the others in the order in which they fell due, making regular returns to this court of such payments, with a record of the numbers and the dates of said coupons and the canceled coupons themselves as vouchers; and that the said The New York and Florida Lumber, Land and Improvement Company and its agent, the said Myron S. Mickles, and all others its agents and servants, — be enjoined and restrained from further action under the said agreements with and resolutions by the said trustees, as stated in the bill and fully set out in Exhibit B, whether in selecting and locating lands embraced in said agreement or in advertising and selling the same; and that the said other defendants named in this bill, whether persons private or corporate, who are in possession of any of the land originally belonging to said trust fund and pledged and donated and wasted in manner set forth in said bill, may be enjoined and restrained from selling, disposing of, or in anywise intermeddling with the same until the further order and decree of this court; and that the said New York and Florida L., L. and I. Company and the last-named defendants may also come to an account with your orator for the proceeds which they may have already received from the
321 sale of any portion of said lands; and that the said trustees may be enjoined to pay to your orator all damages sustained by him by means of the premises; that a receiver may be appointed of the monies and funds of the said trust fund with all necessary and proper directions, and that your orator may have such other, further, or different relief in the premises as to the court shall seem equitable and just, with the costs of the action—

May it please your honor to grant unto your orator the writ of *the* injunction of the United States of America, issuing out of and under the seal of this court, directed to each of the said defendants, their successors, as trustees, their counselors, solicitors, attorneys, and agents, enjoining and restraining each of them in manner and form as hereinbefore prayed for, and that a temporary injunction to the same effect may be directed as aforesaid to the said trustees and to the said The New York and Florida Lumber, Land and Improvement Company and to the said Myron S. Mickles and all others its agents and servants, enjoining and restraining them as aforesaid until further order of the court.

May it please your honor to grant to your orator the writ of subpœna of the United States of America, to be directed to Harrison Reed, Robert H. Gamble, A. R. Meeks, Frank W. Webster, and S. B. Canover, trustees of the internal improvement fund of Florida; John S. Adams, and "The Trustees of the Internal Improvement Fund of Florida," and also to David S. Walker, C. H. Austin, Hugh H. Corley, John Beard, John B. Galbrieth, the Pensacola and Louisville Railroad Company, the Florida Canal and Inland Transpor-
322 tation Company, the Southern Inland Navigation Company, the New York and Florida Lumber, Land and Improvement Company, Myron S. Mickles, and Hubbard L. Hart, thereby com-

manding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear in this honorable court, and then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as to this court shall seem meet.

And your orator will ever pray, &c.

JACKSON, LAWTON & BASINGER,
BISBEE & ARCHIBALD,
Solicitors and of Counsel.

NOTE.—The said defendants, who are now trustees or who have been trustees of the internal improvement fund of Florida, are required to answer all the questions in this bill numbered from "1 to 10," both inclusive. The said The New York and Florida Lumber and Land and Improvement Company and the said Myron S. Mickles will answer the interrogatories numbered 1 and 2. The said Hubbard L. Hart will answer the interrogatories numbered 3 and 6. The Southern Inland Navigation and Improvement Company will answer interrogatories numbered 4 and 6. The Pensacola and Louisville Railroad Company will answer interrogatories numbered 5 and 6.

UNITED STATES OF AMERICA,
Northern District of Forida, } ss:

Francis Vose, the complainant in the foregoing bill of complaint, being duly sworn, says that he has read the foregoing bill
323 of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. VOSE.

Subscribed and sworn to this 3d day of November, 1870, before me—

J. E. TOWNSEND, *Clerk.*

Indorsed: In the United States circuit court for the northern district of Florida. Francis Vose, complainant, and Harrison Reed *et al.*, trustees of the internal improvement fund of Florida, *et al.*, defendants. Bill for discovery, injunction, and relief. Filed November 3, 1870. J. E. Townsend, clerk. Jackson, Lawton and Bassinger, complainant's solicitors. Bisbee & Archibald, complainant's sol's.

UNITED STATES OF AMERICA, *State of Florida:*

In the Fifth Circuit Court of the United States for the Northern District of Florida.

To Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Canover, and John S. Adams, the trustees of the internal improvement fund of Florida and to their successors, The Florida Improvement Company, and its agent, Myron S. Mickles, and all others, its agents and servants, in the said State of Florida:

Whereas it appears to me, W. B. Woods, judge of the — court of the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them, which are past due, and which you, the said trustees named above, have refused to pay, in violation of an act passed by the Legislature of Florida on the 6th day of January, in the year 1855, irrevocably trusting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on said bonds as they should fall due, but that instead thereof you, the said trustees, are misapplying the funds belonging to the said trust; are improperly and fraudulently misappropriating the same and selling and transferring said lands in amounts, in manner, and for consideration that are wholly inconsistent with and violative of the provisions of such act; that you are donating and disposing of the same for merely nominal prices and for scrip and for State warrants not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you, the said The Florida Improvement Company, and you, the said Myron S. Mickles, are the agent of said company, by which said agreement 1,100,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land and Improvement Company at the nominal price of ten cents per acre, and that you, the said Mickles, and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands, and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing and by other lawless and fraudulent acts are diverting the monies which have come and are coming into your hands by virtue of said trust from the payments of said coupons in the order in which they fell due;

And whereas the said complainant by his said bill prays that the writ of injunction be issued restraining you, the above-named parties, from the acts which are therein complained of:

I do, therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Har-

rison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Canover, and John S. Adams, the trustees of the internal improvement fund of Florida, and your successors, under penalty of attachment for contempt and a pain of ten thousand dollars for each act notative of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provision of said act of 1855 fixing the price and allowing pre-emptions of the same in obedience to all the restrictions of that act; that you desist from selling said land for scrip or State warrants of any kind or for aught else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the money
326 or property of said trust funds, except in applying them in the creation of the sinking fund provided by said act of 1855, and applying them in strict accordance with the provisions of that act when said monies properly belong to said sinking fund, or in payment of the coupons of said bonds when said monies have proceeded or shall proceed from the sale of said lands, and that you desist from paying said coupons in any other mode than in the order of their priority fixed by the date of their coming to maturity, paying first such as first become due and the others in the order in which they fell due; and I do enjoin you further and specially that you desist and refrain from any and all actions in executing and carrying out the agreement between you and the said The Florida Improvement Company, described in said agreement the New York and Florida Lumber, Land and Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts; by which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, authority to select and locate from the lands belonging to the internal improvement fund one million one hundred thousand acres of said land at the rate and price of ten cents per acre, upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you, the said Myron S. Mickles and others, the agents and servants of the said The New York and Florida Lumber, Land and Improvement Company, that, under the penalty and
327 pain hereinbefore set out, you desist from further action under the said agreement with the said trustees, whether in selecting or locating land embraced in said agreement or in advertising and selling the same or in disposing of or intermeddling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the further order and decree of this court.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal thereof, at the city of Jacksonville, in said district, this 8th day of December, A. D. one thousand eight hundred and seventy.

J. E. TOWNSEND, *Clerk.*

Endorsed: In the United States circuit court for the northern district of Florida. Francis Vose *vs.* Harrison Reed *et al.* Writ of injunction. Issued December 8th, 1870. Filed January 13th, 1871. J. E. Townsend, clerk. H. Bisby, Jr., Jackson, Lawton & Bassinger, complainant's solicitors.

Served a copy of this writ of injunction upon James S. Adams, secretary of the trustees of the internal improvement fund of Florida, at Jacksonville, Florida, this the 17th December, A. D. 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Frank W. Webster, Simon B. Conover, and Robert H. Gamble, trustees of the in-
328 ternal improvement fund of Florida, at Tallahassee, in said district, this the 10th December, 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Myron S. Mikeles, agent of the New York Land, Lumber and Improvement Company, at Jacksonville, this the 9th December, 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Dep'ty.*

Served a copy of the within injunction upon Harrison Reed, Governor of the State of Florida and president of board of internal fund of Florida, at Tallahassee, in said district, this the 13th of December, 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. L. TIBBITTS,
Dep't'y U. S. Marshal.

329 The President of the United States of America to Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, John S. Adams, trustees of the internal improvement fund of the State of Florida; David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, former trustees of the Pensacola and Louisville Railroad Co.; the Florida Canal and Inland Transportation Company; the Southern Inland Navigation Company; the New York Lumber, Land and Improvement Company; Myron S. Mickles, the agent of the last-named company, and Hubbard S. Hart, citizens and residents of the State of Florida, Greeting:

You are hereby commanded and strictly enjoined that *that*, laying aside all business and notwithstanding any excuse, *that* you be

and appear before the judge of the circuit court of the United States, 5th judicial — and northern district of Florida, on first Monday in January, being the second day thereof, next, wherever the court shall be, to answer to a bill of complaint exhibited against you in the said court by Francis Vose, a citizen and resident of the State of New York, and to do further and to receive what said court shall have considered in that behalf, and this you are not to omit under a penalty upon you of one thousand dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said district and circuit, and the seal of said court, this 8th day of December, A. D. one thousand eight hundred and seventy.

330 J. E. TOWNSEND, *Clerk.*

H. BISBEE, JR.,
JACKSON, LAWTON & BASSINGER,
Complainant's Solicitors.

Served a copy of the within subpœna on Harrison Reed, Governor of the State of Florida and president of the trustees of the internal improvement fund of Florida, in said district, in Tallahassee, Florida, this 13th day of December, 1870.

Served a copy of the within subpœna on ex-Governor D. S. Walker and John Beard, at their place of residence, at Tallahassee, Florida, this the 13th day of December, 1870.

Served a copy of the within subpœna upon H. L. Hart, at Palatka, Florida, and also upon Dr. Morajine, president of the Florida Canal and Inland Transportation Company, at Palatka, Florida, this the 29th day of December, 1870.

G. E. WENTWORTH,
U. S. Marshal,
Per BINES GIBSAR, *Deputy.*

Served a copy of the within subpœna upon Hugh A. Corley, at Leesburg, Fla., this the 14th day of January, 1871.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. L. TIBBITTS,
Dep't- U. S. Marshal.

331 Served a copy of the within subpœna upon Robert H. Gamble, Simon L. Conover, and Frank W. Webster, trustees of the internal improvement fund, at Tallahassee, in said district, this the 10th December, 1870.

Served a copy of the within subpœna upon Myron S. Mickles, agents of the New York Lumber, Land and Improvement Company, at Jacksonville, said district, this the 9th day of December, 1870.

GEO. E. WENTWORTH,
U. S. Marshal,
Per S. CONANT, *Deputy.*

Served a copy of the within subpœna upon J. S. Adams, secretary of the trustees of the internal improvement fund of Florida, at Jacksonville, Florida, this the 17th December, 1870.

GEO. E. WENTWORTH,
U S. Marshal,
Per S. CONANT, *Deputy.*

Indorsed: No. 1. In the United States circuit court, 5th circuit, northern district of Florida. Francis Vose *vs.* Harrison Reed *et al.* Subpœna in chancery issued 8th of December, 1870; returnable 2nd January, 187*0*. Returned and filed 13th of January, 1871. J. E. Townsend, clerk. H. Bisbee, Jr., Jackson Lawton and Bassinger, complainant's solicitors.

332 UNITED STATES OF AMERICA,
Northern District of Florida:

To the judges — the circuit court of the United States for the northern district of Florida:

The petition of Francis Vose, a citizen and resident of the State of New York, respectfully shows—

That on the first day of November, 1870, he filed his bill of complaint in this honorable court against Harrison Reed and others, the trustees of the internal improvement fund of Florida, and others, a copy of which is hereto annexed as part of this his petition.

333 That on the 6th day of December the said bill was amended so as to make the Great Southern Railway Company a party defendant thereto, and for other purposes.

That on the last-mentioned day, upon motion of your petitioner, a writ of injunction was issued in accordance with the prayer of said bill and in manner and — as follows:

UNITED STATES OF AMERICA, *State of Florida:*

In the Fifth Circuit Court of the United States for the Northern District of Florida.

To Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Canover, and John S. Adams, the trustees of the internal improvement fund of Florida, and their successors, The Florida Improvement Company, and its agents and servants in the said State of Florida.

Whereas it appears to me, W. B. Woods, judge of the courts of the United States for the fifth judicial circuit, that Francis Vose, *that Francis Vose*, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Flordia, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them, which are past due, and which you, the said trustees named above, refused to pay, in violation of an act passed by the Legislature of Florida on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land

in trust to make of the same according to the provision of said
334 act and from the proceeds of such sales to pay the coupons on such bonds as they should fall due, but that instead thereof you, the said trustees, are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same, and selling and transferring said lands in amounts, in manner, and for considerations that are wholly inconsistent with and violative of the provisions of said act; that you are donating and disposing of the same for merely nominal prices and for scrip and for State warrants not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you, the said The Florida Improvement Company, and you, the said Myron L. Mickles, the agent of said company, by which said agreement 1,000,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land and Improvement Company at the nominal price of ten cents per acre, and that you, the said Mickles and others, the agents and the servants of said company, are selecting, locating, advertising, and selling the said lands, and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing and by other lawless and fraudulent acts are by virtue of said trust — from the payment of said coupons in the order in which they fell due; and

Whereas the complainant by his said bill prays that the writ of injunction be issued restraining you, the above-named parties, from the acts which are therein complained of:

I do, therefore, in the name and by the authority of the
335 United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Canover, and John S. Adams, the trustees of the internal improvement fund of Florida, and your successors, under penalty of attachment for contempt and a pain of ten thousand dollars for each act violative of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855 fixing the price and allowing pre-emptions of the same in obedience to all the restrictions of the act; that you desist from selling said lands for scrip or State warrants of any kind or for aught else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust fund except in applying them to the creation of the sinking fund provided by said act of 1855, and so applying them in strict accordance with the provisions of that act when said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds when said moneys have proceeded or shall proceed from the sale of said lands, and that you desist from paying said coupons in any other mode than in the order of their priority fixed by the date of their coming to maturity, paying first such as first become

due and the others in the order in which they fell due; and I do enjoin and command you, further and specially, that you desist and refrain from any and all action in executing and carry-
336 ing out the agreement between you, the said The Florida Improvement Company, described in said agreement as the New York and Florida Lumber, Land and Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts, and in which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, "authority" to select and locate from the lands belonging to the internal improvement fund one million one hundred thousand acres of said land at the rate of and price of ten cents per acre upon terms and conditions which are therein set forth.

And I do enjoin you and command you, the said Florida Improvement Company, and you, the said Myron L. Mickles and others, the agents and servants of the said The New York and Florida Lumber, Land and Improvement Company, that, under the penalty and pain hereinbefore set out, you desist from further action under the said agreement *which* the said parties, whether in selecting or locating lands embraced in said agreement, or in advertising and selling the same, or in disposing of or intermeddling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the further order and decree of this court.

In witness whereof I have hereunto set my official hand, at Jacksonville, in the northern district of Florida, this sixth day of December, in the year eighteen hundred & seventy.

337 W. B. WOODS,
U. S. Circuit Judge for the 5th Circuit,
Northern District of Fla.

And your petitioner further shows that a writ of subpœna directed to Harrison Reed, Robert H. Gamble, A. R. Meek, Frank W. Webster, S. B. Canover, and John S. Adams, the trustees of the internal improvement fund, and to David S. Walker and others, individuals and corporations, was also issued, commanding them and every of them to appear on the first Monday of January, 1871, and then and there to answer your petitioner's said bill of complaint, etc.

That said writs of injunction and subpœna were duly served upon all parties to whom they were respectfully directed.

That all of the defendants named in said writ of subpœna, with the single exception of David S. Walker, have failed to obey the mandate of the court, and that orders were entered on the first Monday of February last, at the clerk's office of this honorable court, that the bill be taken *pro confesso* against them.

That the defendants named in the said writ of injunction have wholly failed to obey or to respect the orders of the court, as herein set forth, but, on the contrary thereof, have treated the same with manifest contempt; that on or about the sixth day of March, 1871,

the said trustees of the internal improvement fund sold to E. A. Studwell three hundred thousand acres of the lands belonging to the said fund, the sale being made at ten per cent. and upon terms identical with those of the agreement between the said trus-
338 tees and the Florida Improvement Company, the execution of which said agreement had been specifically enjoined, and your petitioner shows that the same E. A. Studwell is a member and officer of the said The Florida Improvement Company; that as part of the agreement between the said trustees and himself and as a condition for said sale they, the said trustees, are to be relieved from any obligation to carry out their said original agreement with the said company, so far as the 300,000 acres are concerned, the said company relinquishing its claim to that quantity of its purchase in favor of said Studwell; and your petitioner submits that this action of the said the trustees and the said Studwell is in manifest evasion and therefore in contempt of the injunctional order hereinbefore set out.

And your petitioner further shows that prior to the filing of his said bill of complaint the said the trustees, etc., had undertaken to convey to the Southern Inland Navigation and Improvement Company, one of the defendants named in said bill, a much larger quantity of said trust lands than is therein set forth, to wit, the enormous quantity of about one and one-quarter millions of acres, at six and one-half cents per acre, or for some other or wholly inadequate consideration, but that the said sale was not consummated until after the said writ or injunction had been served upon the said the trustees, and was not in fact perfected until within about a month last past by delivery of the title deed to W. H. Gleason, the managing agent of said last-mentioned company.

339 And your petitioner further shows unto your honors that after the order granted by the Hon. W. B. Woods on the 31st day of October, 1870, together with a copy of your petitioner's said bill of complaint, had been served upon each of the said trustees, giving them notice to show cause why the writ of injunction should not be issued as prayed for, *nay* while the day for the hearing of said motion was being postponed at the instance and upon the pretexts of said defendants, and while his honor Judge Woods had the question of granting said writ under judicial advisement, the said trustees were active in making a conveyance on one hundred and two thousand four hundred and seven $\frac{1}{100}$ acres of land to the Great Southern Railway Company; and your petitioner submits that the two last-named conveyances and sales of the said trustees and their acts in connection with the same are in contempt of the authority and the injunctional orders of this honorable court.

Your petitioner is informed that, in pretended explanation of the said evasions and said violations of said injunctional order, the said the trustees claim to be acting under legal advice; that by the 16th section of the act of 1855 they "are required" to encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable, and that the sales which your petitioner has referred to have been made

by them in the legitimate discharge of their trust, and consequently are not in violation of said injunction, being "not otherwise than in strict accordance with the provisions of said act of 1855;"

340 but your petitioner shows that not only was said writ of injunction granted upon the ground that sales of such vast domains to private persons and for nominal prices were in violation of the act of 1855 and a gross fraud as against your petitioner's rights, but that the people of Florida whose interests and welfare these trustees and their colleagues in waste and plunder so noisily pretend to be protecting have condemned such sales and practices by concurrent resolution of their General Assembly.

Concurrent Resolution Relative to Certain Lands about to be Disposed of by the Trustees of the Internal Improvement Fund.

Whereas it is understood by this General Assembly that the trustees of the internal improvement fund have sold or — about to sell the lands in Escambia and Santa Rosa counties for six cents per acre to the Pensacola and Louisville Railroad Company: Therefore

Resolved by the assembly, the senate concurring, That any such sale ought not to be made; that its effect is to depreciate the real estate held by the fund; to prevent actual settlers from getting homes; to make citizens look to the liberality of a corporation instead of to the State's fostering care of her citizens; to weaken the State government and State authorities and strengthen a corporation; to reduce the value of State lands, and, therefore, that the trustees aforesaid ought not to make said sale to said corporation.

Adopted February 12, 1870.

Your petitioner avers that the condemnation thus emphat-

341 ically expressed by the Legislature of Florida upon the actings and doings of the said trustees complained of by your petitioner meets the approval of all of her people who are truly interested in her welfare and who are not, directly or indirectly, connected with the men or "the rings" who seek to prey upon her means and her credit.

Your petitioner further shows that prior to the granting of said writ of injunction the said Florida Improvement Company had deposited in the hands of Simon B. Canover, then treasurer of said board of trustees, coupons detached from bonds which had been issued in accordance with the provisions of the said act of 1855 to the amount upon their face of $10,000; that this deposit was made by the said company in attempted payment for one hundred thousand acres of land under said agreement between the said trustees and the said improvement company, but said Conover refused to accept it; that the market value of said coupons, if not worthless, was not more than 10 *or* 30 cents on the dollar, and had they been accepted by said treasurer the land would have been paid for at the rate of from one to three cents per acre; that as the result of said refusal by said Conover the sale of said company remained incomplete at the time said writ of injunction was issued and served, but that subsequently, the said Conover having been displaced and John

S. Adams appointed in his stead, the said coupons were accepted at par in payment by the latter, and the sale was perfected.

And your petitioner charges that all this is in manifest contempt of the injunctional order of this court, as well in reference to the execution of said agreement between the said trustees and the
342 said improvement company and the sale of said trust lands generally as in reference of the receipt of aught else than current money of the United States in payment of the same.

And your petitioner further shows that although he is the holder of a very large number of coupons referred to in said writ of injunction and which are oldest in date, and although there ought to be a considerable sum in the hands of the said treasurer of said board, and although it is not denied that there is actually a small sum which should be applied to their payment, yet that his repeated applications for the payment of the same have been met by refusals; that your petitioner has good reason to believe that these, indeed all other, monies which have come or which are coming into the hands of the treasurer of said trustees, whether from the sale of lands or from the payment of the one per cent. per annum by railroad companies to the sinking fund, are being misappropriated, misapplied, and wasted; that they are paid out to coupons which are junior to his own or which have been fraudulently reissued or are fraudulently outstanding; that they are used or lent out by said board of trustees or by members of it in a manner violative of their trust and ruinous to the rights of your petitioner, or are squandered in payment of the expenses of litigation generated by the neglect of the said trustees to discharge their manifest duty not simply in the matter of which petitioner complains, but in others, and that all this still goes on in glaring contempt of the order of the court.

And your petitioner shows that while the said trustees stand in contempt as aforesaid of the mandate of your honors, that
343 they should make answer to your petitioner's said bill of complaint and render an account of their past administration of said fund, they do not fail by withholding the books and records of the said board from inspection and by refusing to give to your petitioner the information to which he has a clear right, as *cestui que trust*, to cast such darkness around their present and current acts and doings as to make it impossible to ascertain how repeatedly or to what extent they are daily violating the orders of the court and the rights of your petitioner; but he most solemnly avers his belief that in their keeping this great fund, whether existing in lands or money, is in the most imminent danger of being wholly lost not simply to your petitioner and others, *bona fide* creditors and *cestui que trusts* in it, but eventually to the people of Florida themselves.

And thereupon he respectfully prays that a fit and proper person may be appointed as speedily as possible receiver to take charge of the same, under such directions and limitations as your honors may seem wise and proper. And your petitioner further prays that an order may be issued, directed to the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund

of Florida, and to J. B. C. Drew, and any others their successors; and also to Myron S. Mickles and E. A. Studwell and others, agents and servants to the said the Florida Improvement Company, commanding them and each of them to appear upon some day and at some place to be designated by your honor, and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them and every of them and on ac-
344 count of their various acts in contempt of the same.

UNITED STATES OF AMERICA, *State of Georgia:*

Personally appeared Francis Vose, who, being duly sworn, deposes and says that he is informed and verily believes that S. B. Conover, J. S. Adams, A. L. Meek, and F. W. Webster, who are trustees of the internal improvement fund, are themselves stockholders in the Great Southern railway, the corporation referred to in this petition, as also in the amended bill of complaint likewise referred to therein.

And deponent further says he is informed and believes that E. H. Reed is also a stockholder, is the son of Harrison Reed, also a trustee; that the name of Harrison Reed appears as a corporator in the act giving to said railway its charter; and deponent does verily believe that the interest of the son is the interest of the father.

Deponent further says that the publication hereto annexed bearing the caption "Astounding Disclosures" contains a correct statement of the persons interested in said railway, as he does verily believe; and he does also believe that the said the trustees, through the influence of the said the corporators or stockholders, who are also trustees, are conveying and granting to said railroad company the lands of said trust fund in large quantities.

F. VOSE.

Sworn to and subscribed before me Ap'l 18th, 1871.
[SEAL.] JAS. McPHEARSON, *Clerk.*

345 Endorsed: Francis Vose *vs.* The Trustees of the Int. Im. Fund of Florida *et al.* Affidavit to be used upon motion for receiver. Filed April, 1871.

UNITED STATES OF AMERICA, *Northern District of Florida:*

To the judges of the circuit court of the United States for the northern dist. of Florida:

The petition of Francis Vose, a citizen of the State of New York, respectfully shows—

That on the first day of November, 1870, he filed his bill of complaint in this honorable court against Harrison Reed and others, the trustees of the internal improvement fund of Florida, and others, as copy of which is hereto annexed as part of this his petition.

That on the sixth day of December the said bill was amended so as to make the Great Southern Railway Company a party defendant thereto and for other purposes.

That on the last-mentioned day, upon motion of your petitioner, a writ of injunction was issued in accordance with the prayer of said bill and in manner and form as follows:

UNITED STATES OF AMERICA, *State of Florida:*

In the Fifth Circuit Court of the United States for the Northern District of Florida.

To Harrison Reed, Robert H. Gamble, Almon R. Meek,
346 Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund of Florida, and their successors, the Florida Improvement Company, and its agents and servants in the State of Florida:

Whereas it appears to me, W. B. Woods, judge of the — court of the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them which are past due, and which you, the said trustees above named, refuse to pay, in violation of an act passed by the Legislature of Florida on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act, and from the proceeds of such sales to pay the coupons on such bonds as they should fall due, but that instead thereof you, the said trustees, are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same, and selling and transferring said lands in amounts, in manner, and for consideration that are wholly inconsistent with and violative of the provisions of said act; that you are donating and disposing of the same for merely nominal prices and for scrip and State warrants not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you, the said The Florida Improvement Company, and you, the said Myron S. Mickles, the agent of said company, by which said agree-
347 ment 1,100,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land and Improvement Company at the nominal price of ten cents per acre; and that you, the said Mickles and others, the agents and servants of said company, are selecting, locating, advertising, and selling the said lands; and that thus you, the said trustees, are wasting and destroying the land and the fund so vested in you by said act of 1855, and by the foregoing, by other lawless and fraudulent acts, and diverting the moneys which have come and are going into your hands by virtue of said trust from the payment of said coupons in the order in which they fell due.

And whereas the complainant by his said bill prays that the writ of injunction be issued, restraining you and the above-named parties from the acts which are therein complained of:

I do, therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund of Florida, and your successors, under penalty of attachment for contempt and a pain of ten thousand dollars for each act violative of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to the said trust otherwise than in strict accordance with the provisions of said act of 1855, fixing the price and allowing pre-emption of the
348 same, in obedience to all the restrictions of that act, that you desist from selling said lands for scrip or State warrants of any kind or for ought else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust fund except in applying them to the creation of the sinking fund provided for by said act of 1855, and so applying them in strict accordance with the provisions of that act, when said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds which said moneys have proceeded or shall proceed from the sale of said lands; and that you desist from paying said coupons in any other mode — in the order of their priority, fixed by the date of their coming to maturity, paying first such as first became due and the others in the order in which they fell due; and I do enjoin and command you further and specially that you desist and refrain from any and all action in executing and carrying out the agreement between you, the said The Florida Improvement Company, described in said agreement, and the New York and Florida Lumber, Land and Improvement Company, which said agreement is embodied in the resolution passed by you, the said trustees, on the first day of March, in the year eighteen hundred and seventy, or thereabouts, and in which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, "authority" to select and locate, from the lands belonging to the internal improvement fund, one million one hundred thousand acres of said land, at the rate of and price of ten cents per acre, upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Im-
349 provement Company, and you, the said Myron L. Mickles and others, the agents and servants of the said New York and Florida Lumber, Land and Improvement Company, that, under the penalty and pain hereinbefore set out, you desist from further action under the said agreement with the said trustees, whether in selecting or locating lands embraced in said agreement or in advertising and selling the same, or in disposing of or intermeddling with the proceeds which have resulted from the sale of any portion of the same, further than to retain them safely, subject to the further order and decree of this court.

In witness whereof I have hereunto set my official hand, at Jack-

sonville, in the northern district of Florida, this sixth day of December, in the year eighteen hundred and seventy.

W. B. WOODS,

U. S. Circuit Judge for the 5th Circuit, Northern District of Fla.

And your petitioner further shows that a writ of subpœna, directed to Harrison Reed, Robert H. Gamble, A. R. Meeks, Frank M. Webster, S. B. Canover, and John S. Adams, the trustees of the internal improvement fund, and to David S. Walker and others, individuals and corporations, was also issued, commanding them and every of them to appear on the first Monday of January, 1871, then and there to answer your petitioner's said bill of complaint, etc.

That said writ of injunction and subpœna were duly served upon all parties to whom they were respectfully directed.

That all the defendants named in said writ of subpœna,
350 with the single exception of David S. Walker, have failed to obey the mandate of the court, and that orders were entered on the first Monday of February last, at the clerk's office of this honorable court, that the bill be taken *pro confesso* against them.

That the defendants named in this said writ of injunction have wholly failed to obey or to respect the orders of the court as therein set forth, but, on the contrary thereof, have treated the same with manifest contempt; that on or about the sixth day of March, 1871, the said trustees of the internal improvement fund sold to E. A. Studwell three hundred thousand acres of the lands belonging to said fund, the sale being made at ten cents per acre and upon terms identical with those of the agreement between the said trustees and the Florida Improvement Company, the execution of which said agreement had been specifically enjoined. And your petitioner shows that the said E. A. Studwell is a member and officer of the said The Florida Improvement Company; that as part of the arrangement between the said trustees and himself and as a condition of said sale they, the said trustees, are to be relieved from any obligation to carry out their said original agreement with the said company, so far as the 300,000 acres are concerned, the said company relinquishing its claim to that quantity of its purchase in favor of said Studwell; and your petitioner submits that this action of the said the trustees and the said Studwell is in manifest evasion and therefore in contempt of the injunctional order hereinbefore set out.

And your petitioner further shows that prior to the filing
351 of his said bill of complaint the said the trustees, etc., had undertaken to convey to the Southern Inland Navigation and Improvement Company, one of the defendants named in said bill, a much larger quantity of said trust lands than is herein set forth, to wit, the enormous quantity of about one and one-quarter millions of acres at six and one-half cents per acre, or for some other wholly inadequate consideration, but that the said sale was not consummated until after the said writ of injunction had been served upon the said the trustees, and was not, in fact, perfected until within about a month last past, by delivery of the title deed to W. H. Gleason, the managing agent of said last-mentioned company.

And your petitioner further shows unto your honors that after the order granted by the Hon. W. B. Woods on the 31 day of October, 1870, together with a copy of your petitioner's said bill of complaint, had been served upon each of the said trustees, giving them notice to show cause why the writ of injunction should not be issued as prayed for—nay, while the day for the hearing of said motion was being postponed at the instance and upon the pretexts of said defendants, and while his honor Judge Woods had the question of granting said writ under judicial advisement—the said trustees were active in making a conveyance of one hundred and two thousand four hundred and seven $\frac{17}{100}$ acres of land to the Great Southern Railway Company, and your petitioner submits that the two last-named conveyances and sales by the said trustees and their acts in connection with the same are in contempt of the authority and the injunctional orders of this honorable court.

Your petitioner is informed that in pretended explanation
352 of the said evasions and said violations of said injunctional order, the said the trustees claim to be acting under legal advice; that by the 16th section of the act of 1855 they "are required" to encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable, and that the sales which your petitioner has referred to have been made by them in the legitimate discharge of their trust, and consequently are not in violation of said injunction, being "not otherwise than in strict accordance with the provisions of said act of 1855;" but your petitioner shows that not only was said writ of injunction granted upon the ground that sales of such vast domains to private persons and for nominal prices were in violation of the act of 1855 and a gross fraud as against your petitioner's rights, but that the people of Florida, whose interest and welfare these trustees and their colleagues in waste and plunder so noisily pretend to be protecting, have condemned such sales and practices by concurrent resolution of their General Assembly.

Concurrent Resolution Relative to Certain Lands about to be Disposed of by the Trustees of the Internal Improvement Fund.

Whereas it is understood by this General Assembly that the trustees of the internal improvement fund have sold or are about to sell the lands in Escambia and Santa Rosa counties for six cents per acre to the Pensacola and Louisville Railroad Company; therefore

Resolved by the assembly, the senate concurring, That any
353 such sale ought not to be made; that its effect is to depreciate the real estate held by the fund; to prevent actual settlers from getting homes; to make citizens look to the liberality of a corporation instead of to the State's fostering care of her citizens; to weaken the State government and State authorities and strengthen a corporation; to reduce the value of State lands, and, therefore, that the trustees aforesaid ought not to make said sale to said corporation.

Adopted February 12, 1870.

Your petitioner avers that the condemnation thus emphatically expressed by the Legislature of Florida upon the actings and doings of the said trustees complained of by your petitioner meets the approval of all of her people who are truly interested in her welfare and who are not, directly or indirectly, connected with the men or "the rings" who seek to prey upon her means and her credit.

Your petitioner further shows that prior to the granting of said writ of injunction the said The Florida Improvement Company had deposited in the hands of Simon B. Canover, then treasurer of said board of trustees, coupons detached from bonds which had been issued in accordance with the provision of the said act of 1855 to the amount upon their face of $10,000; that this deposit was made by said company in attempted payment for one hundred thousand acres of land under said agreement between the said trustees and the said improvement company, but said Conover refused so to accept it; that the market value of said coupons, if now worthless, was not more than 10 to 30 cents on the dollar, and had they
354 been accepted by said treasurer the land would have been paid for at the rate of from one to three cents per acre; that, as the result of said refusal by said Conover, the sale of said company remained incomplete at the time said writ of injunction was issued and served, but that subsequently, the said Conover having been displaced and John S. Adams appointed in his stead, the said coupons were accepted at par in payment of the latter, and the sale was perfected; and your petitioner charges that all this is in manifest contempt of the injunctional order of this court, as well as in reference to the execution of the agreement between the said trustees and the said improvement company and the sale of the said trust lands generally as in reference to the receipt of aught else than current money of the United States in payment for the same.

And your petitioner further shows that, although he is the holder of a very large number of coupons referred to in said writ of injunction and which are oldest in date, and although there ought to be a considerable sum in the hands of the said treasurer of *said treasurer of* said board, and although it is not denied that there is actually a small sum which should be applied to their payment, yet that his repeated applications for payment of the same have been met by refusals; that your petitioner has good reason to believe that these, as indeed all other, moneys which have come or which are coming into the hands of the treasurer of said trustees, whether from the sale of lands or from the payments of the one per cent. per annum by railroad companies to the sinking fund, are being misappropriated, misapplied, and wasted; that they are paid out
355 to coupons which are junior to his own or which they have fraudulently reissued or are fraudulently outstanding; that they are used or lent out by said board of trustees or by members of it in a manner violative of their trust and ruinous to the rights of your petitioner or are squandered in payment of the expenses of litigation generated by the neglect of the said trustees to discharge their manifest duty, not simply in the matters of which your peti-

tioner complains, but in others, and that all this still goes on in glaring contempt of the order of the court.

And your petitioner shows that, while the said trustees stand in contempt as aforesaid of the mandate of your honors, that they should make answer to your petitioner's said bill of complaint and render an account of their past administration of said fund, they do not fail, by withholding the books and records of the said board from inspection and by refusing to give to your petitioner the information to which he has a clear right as *cestui que trust*, to cast such darkness around their present and current acts and doings as to make it quite impossible to ascertain how repeatedly or to what extent they are daily violating the orders of the court and the rights of your petitioner; but he most solemnly avers his belief that in their keeping this great fund, whether existing in lands or moneys, is in the most imminent danger of being wholly lost, not simply to your petitioner and others, *bona fide* creditors and *cestuis que trust* interested in it, but eventually to the people of Florida themselves.

And thereupon he respectfully prays that a fit and proper person may be appointed, as speedily as possible, receiver to take
356 charge of the same under directions and limitations as to your honors may seem wise and proper.

And your petitioner further prays that an order may be issued directed to said Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund of Florida, and to J. B. C. Drew and any others their successors, and also to Myron S. Mickles and E. A. Studwell and others, agents and servants of the said The Florida Improvement Company, commanding them and each of them to appear, upon some day and at some place to be designated by your honors, and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them and every of them for and on account of their various acts in contempt of the same.

(Signed) FRANCIS VOSE.

And sworn to.

In the Circuit Court of the United States for the Northern District of Florida, in Chambers, at Savannah.

APRIL 17, 1871.

On reading this petition it is ordered that Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, John S. Adams, and J. B. C. Drew, the trustees of the internal improvement fund of Florida, and any others their successors, show cause before me, or before the honorable Jos. P. Bradley, judge of the Supreme Court of the United States for this judicial circuit, on the eighth day of May next, at the rooms of the courts of the
357 United States, in Savannah, and at ten o'clock in the morning, why a receiver should not be appointed in accordance with the prayer of said petition, and that the said parties above named, and also Myron M. Mickles & E. A. Studwell & others, agents and

servants of the Florida Impovement Company, show cause at the same time and place why the penalty set out in said writ of injunction should not be inflicted upon them and each of them in accordance with petitioner's prayer.

And it is further ordered that said defendants hereinbefore named have leave to file their answers to complainant's bill of complaint referred to in the said petition as having been filed by him in this court at any time before the day hereby appointed for the said "showing cause" by them and to use such answers, whether they be filed or not, at the said hearing, provided a good reason be given for the failure to file them.

And it is further ordered that the said parties hereinbefore named as defendants shall receive notice of this order by service of a copy of the same and of this petition, but without the exhibit, upon their solicitors at least ten days before the said 8th day of May next.

And it is further ordered that the clerk of the United States courts at Jacksonville deliver the original bills of complaint and all other original papers constituting the record in said cause of Francis Vose *vs.* The Trustees of the Internal Improvement Fund and others to complainant's counsel, that they may be used in the said hearing on the 8th day of May next.

(Signed) W. B. WOODS,
U. S. Circuit Judge for 5th Circuit & Northern District of Florida.

358 The joint and several answers of Harrison Reed, who is Governor of the State of Florida; Simon B. Conover, who is the treasurer of said State, and John S. Adams, who is the commissioner of immigration of said State, trustees of the internal improvement fund of the State of Florida, defendants, to the bill of complaint against them in the United States circuit court for the fifth circuit and northern district of Florida by Francis Vose, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say—

That heretofore, to wit, on the — day of ——, A. D. 186–, the said present complainant filed and exhibited his bill of complaint in this honorable court against these defendants and their then co-trustee, Almon R. Meek, attorney general of said State, and their now co-trustees, Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor general and register of public lands of said State, praying for an account of all the moneys and property of the internal improvement fund of the State of Florida and of trust fund aforesaid and for an order and decree of

this honorable court to enforce the collection and payment of all sums due and to become due to the said trustees of the internal improvement fund and of all indebtedness and lia-
359 bilities thereto; and further praying that the trustees of the internal improvement fund be required to pay to the said present complainant his bonds and coupons, as far as the same were due and payable, from the moneys and funds of the said trust fund as soon and as fast as the same could be done, and an equal share of said moneys and funds from time to time in proportion to the amount thereof overdue to creditors, respectively, holding bonds and coupons, and which were liens on the said trust fund, including payments that had already been made on any of said debts; and further praying this honorable court to enjoin and restrain said trustees of internal improvement fund from lending or investing, appropriating, disposing of, or using any of the moneys or funds of the said trust fund and sinking fund, except in payment of the bonds and coupons aforesaid in the manner aforesaid and expenses of the trust, until said bonds and coupons of the said complainant should be paid and satisfied, and that the said trustees of the internal improvement fund should be adjudged to pay to the said present complainant all damages sustained by him by means of the premises, &c.; and further praying this honorable court to appoint a receiver in said cause to be empowered and authorized to demand and receive and take an account of all moneys, securities, and funds of the said internal improvement fund, except the land belonging to said fund, and that the said receiver be authorized to pay to the said present complainant the amount found to be due on his said coupons and interest out of the moneys, securities, and funds so received and taken by him, and that the said trustees of the internal improvement fund be ordered to deliver to said receiver
360 all books, papers, documents, and vouchers of every kind whatsoever, and that certain conveyances to one Hubbard L. Hart and alleged donations to certain corporations be annulled, set aside, and the same declared subject to the lien of the said present complainant on said internal improvement fund, &c., and claiming substantially all such rights and interests in the said internal improvement fund of the State of Florida, of which said fund these defendants are trustees, as he, the said present complainant, now claims in and by his present bill of complaint and in the same manner and for the same objects and same matters and to the same effect as the said present complainant now prays by his said present bill, and that these defendants and their then co-trustee, the said Almon R. Meek, the attorney general of said State, and their *own* co-trustees, Robert H. Gamble, comptroller of the State, and Frank W. Webster, surveyor general and register of public lands of said State, appeared and put in their joint and several answers to the said former bill of complaint, and that an application was made for an injunction thereupon, which was refused, and that the said former bill and the several proceedings in the said former cause, as these defendants are informed and aver, now remain pending and as of record in this honorable court, the said cause being yet unde-

termined and, as these defendants are informed, up to this time undismissed; all of which said several matters will more fully appear by reference to the said bill, answer, and other papers in said former cause, and to which these defendants crave leave to refer in support of their said averment in this behalf; all of which said several matters these defendants do aver and insist upon in
361 bar to the said complainant's present bill of complaint, and claim the said benefit thereof in this their answer as if they had availed themselves thereof by plea in bar to said bill.

These defendants, further answering, admit that they hold the offices, respectively, above named; that these defendants, with their former co-trustee, Almon R. Meeks, the attorney general of said State, and their now co-trustees and codefendants, Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor general and register of public lands of said State, were elected and appointed to the offices held by them, respectively, as aforesaid on or about the dates following, viz: Harrison Reed, Governor, &c., May 6th, 1868; Robert H. Gamble, comptroller, &c., July 10, 1868; Simon B. Conover, treasurer, &c., July 21, 1868; Frank W. Webster, surveyor general, &c., July 29, 1868; John S. Adams, commissioner of immigration, &c., January 14, 1869, and Almon R. Meek, attorney general, &c.; that by virtue of their respective said offices they became, respectively, from the dates of their respective elections and appointments as aforesaid, trustees of said fund, except this defendant, John S. Adams, who was constituted *ex officio* a trustee, as in said bill alleged, by an act of the Legislature of said State approved February 1, 1869, but they deny that the trustees of said internal improvement fund, as in said bill alleged, are a corporation created by act of the General Assembly of said State, or that said trustees or these defendants, as such trustees, are, in law, equity, or otherwise, responsible, liable, or chargeable as a corporation or body corporate; that their former co-trustee, Almon R. Meeks, attorney general of said State, resigned his said office, and thereby ceased to be a
362 trustee of said fund, on or about the 10th day of December, 1870; that Sherman Conant was appointed to fill the vacancy occasioned by the resignation of the said Almon R. Meek on or about the 10th day of December, 1870; that the said Sherman Conant accepted said office and continued therein and to discharge the duties thereof until the adjournment of the late session of the Legislature of said State, to wit, on or about the 26th day of January, 1871; that J. B. C. Drew is now filling the said office of attorney general of said State by an "*ad interim*" appointment, made by the Governor thereof, and by virtue of such appointment is now acting as their co-trustee; that these defendants were elected and appointed to office as aforesaid under the new or reconstructed State government of said State, then recently established under the reconstruction acts of the Congress of the United States; that, owing to the unsettled political condition of the State for some time preceding and for some time after the inauguration of said new State government, the said defendants and the co-trustees, in the discharge of their duties cast upon them as trustees as aforesaid and with which

they had no previous acquaintance, experienced great difficulty in obtaining full and accurate information with respect to the status of said fund or its administration by their predecessors; that their difficulties and embarrassments in this behalf were enhanced by the fact that their immediate predecessors never turned over or made to these defendants any formal or regular surrender of the said fund or furnished to these defendants any reports, accounts, lists, schedules, or statements showing its status or condition at the time when it first fell into the hands of these defendants; that, on account thereof, in respect to many matters they were
363 compelled to get information as best they could; that they and their co-trustees addressed themselves at once to the new and embarrassing duties, which, by virtue of their offices, were thus devolved upon them, and they insist that, under all the circumstances, and with a due appreciation of the magnitude of their trust and the various and important public and private interests connected wherewith, *that* they have discharged their duties not only in good faith, but in accordance with the spirit, object, and purpose of said trust, and they deny that they or either or any of them have been guilty of fraudulent and illegal acts and of neglect and refusal to discharge their duty as the said complainant has in and by his said bill alleged against them; and these defendants, further severally answering, say that they insist that the said complainant is not entitled from these defendants or any or either of them to any relief touching or concerning any breaches or alleged or supposed breaches of trust occurring prior to the election or appointment of these defendants to office as aforesaid, and that, if entitled to any such discovery or relief, the said complainant is entitled to the same only from or against those whose acts are brought into question and who were then in control of said fund and are, or ought to be, familiar with all and every of such matters, and who, as these defendants believe, are well known to said complainant, and are, some of them, parties defendants to his said bill, and not from or against these defendants, who could not have had and did not have any connection therewith, and cannot, according to any principle of equity and good conscience, be controlled
364 or prejudiced in their management of said fund on account thereof or be held answerable or chargeable therefor.

These defendants, further severally answering, admit that the "Act to provide for and encourage a liberal system of internal improvement in this State" was approved by the Governor thereof, as in said bill alleged, and that Exhibit A to said bill annexed is a true copy of said act; that thereby certain lands therein mentioned and the proceeds which had accrued or were to accrue to said State from the sale thereof were set apart and declared a distinct and separate fund, to be called the "internal improvement fund of the State of Florida," and to be strictly applied according to the provisions of said act; that by the second section thereof it was, among other things, provided, that, for the purpose of securing a proper application of said fund for the purpose in said — declared, said lands and all the funds arising from the sale thereof, after pay-

ing the necessary expenses of selection, management, and sale, were irrevocably vested in five trustees, to wit, in the Governor of said State, the comptroller of public accounts, the State treasurer, the attorney general, and the register of public lands, and their successors in office, to hold the same in trust for the uses and purposes thereinafter provided, with the power to sell and transfer said lands to the purchaser and receive payment for the same and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several States, or the internal improvement bonds issued under the provision of the said act, and drawing not less than six per cent. annual interest, also the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of said act, the interest from time to time as it should become due on the bonds to be issued by the different railroad companies under authority of said act; also to receive and demand semi-annually the sum of one-half of one per cent., after each separate line of railroad was completed, on the entire amount of the bonds issued by said railroad company, and invest the same in stocks of the United States or State securities, or in the bonds of said act provided to be issued by said company; also to invest the surplus interest of said sinking-fund investment as it should accrue, and also to demand to receive from each railroad company named in said act the amount due to the internal improvement fund from said railroad company, according to the provisions therein contained, on account of interest on the bonds issued by said company, &c., though for greater certainty as to the particular contents of said act these defendants crave leave to refer thereto, when produced, to this honorable court.

These defendants, further severally answering, admit that the Florida Railroad Company, as in said bill alleged, accepted the provisions of the said "Act to provide for and encourage a liberal system of internal improvements in this State" for so much of the line of road indicated in said act as a proper improvement to be aided from the internal improvement fund as lay between Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension of Cedar Keys, in East Florida, and that said company did, under its original charter and the act amendatory thereto and in conformity with the provisions of the said "Act to provide for and encourage a liberal system of internal improvement in this State," *did* construct and build so much of said line of road as lay between the said points, Amelia Island and Cedar Keys, and that under the terms of said act the said Florida Railroad Company did issue a large number of coupon bonds of the character and of the amounts stated in said bill, and that the defendants are informed and believe that the said complainant is the owner and holder of one hundred and ninety-five of said bonds, and that the entire principal thereof and interest thereon, save such of the coupons as were paid in the year 1860, are still outstanding.

That they also believe it to be true that the said Florida railroad, on account of the failure of said company to provide for the interest

on the bonds issued by it as aforesaid and the sinking fund of one per cent. per annum required by the said act, the provisions of which it had accepted as aforesaid, was in conformity to the provisions of the said act at or about the time stated in said bill by the predecessors of these defendants, the persons then holding the offices of trustees of said internal improvement fund taken possession and sold, and that Edward H. Dickerson and associates became the purchasers thereof for about the sum *of* stated; that the said sale was made by the predecessors of these defendants, as these defendants are advised and believe, upon the conditions expressed in the said "Act to provide for and encourage a liberal system of internal improvements in this State," that the purchaser should continue the payment of one-half of one per cent. semi-
367 annually to the sinking fund until all the outstanding bonds were discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase-money paid in; and these defendants are advised that the provisions of said act in this behalf made with respect to the conditions of sale and the penalty and forfeiture resulting from the non-compliance therewith on the part of the purchaser constitute and are the only right, lien, or claim which the holders of outstanding bonds have upon said road; that these defendants had nothing to do with the sale of the said road, nor did they decide to make or in fact make any purchases of outstanding bonds of said road after its sale or deposit any of the moneys arising from said sale in the hands of Moses Taylor, of the city of New York, or any one else; that these defendants were not, nor were either of them at the time of said alleged transaction trustees of the said fund. They are, however, informed and believe that the persons then exercising the duties of trustees of said fund did purchase, or receive as equivalent to cash from the purchasers of said road, at their *pro rata* of the purchase money, bonds of the said Florida Railroad Company to the amount mentioned in said bill. They are also informed and believe that the persons then discharging the duties of trustees did place the amount mentioned in said bill in the hands of the said Moses Taylor for the purpose of purchasing and taking up the outstanding bonds at the rate mentioned, and that the said Moses Taylor did afterwards purchase some of said bonds—the precise amount they cannot here state, but are informed and believe that up to April, 1868, he had purchased or taken two hundred and fifty-seven (257) of said
368 bonds, and that so much of the money originally deposited with him as has not been used in purchasing said bonds or in purchasing a bond of the State of Florida, payable to Edward H. Dickerson and associates, as well as hereinafter more fully stated, still remains in his hands. These defendants deny in the most positive terms that they or either of them ever received or misappropriated the sum of $200,000, or any other sum, or loaned or invested said sum, or any other sum, in confederate scrip or bonds, or that they purchased, with $41,000 belonging to said fund, bonds of the State of Florida, or that they adopted a resolution to lend to the State of Florida $45,000 of the said fund, or that in the year 1867

they adopted any resolutions with respect to the fund in the hands of the said Moses Taylor, or adopted any resolution authorizing the president of said — to invest out — the funds then in the hands of said Taylor, a sufficient amount to purchase a bond of the State of Florida, payable to said Dickerson, for the principal sum of $21,000, and the interest on the same, or that they or either of them were in any manner connected with any or either of the said transactions charged and alleged in said bill as occurring prior to and during the year 1867, and prior to their several and respective appointments; that it may be true that the persons then exercising or claiming to exercise the duties of trustees of said internal improvement fund did during the late war invest or appropriate some part of said fund then under their control in Confederate scrip or bonds which have proved worthless, but these defendants insist that they are in nowise responsible therefor or chargeable therewith, and
369 that these defendants, the present trustees of said fund, who are wholly innocent of any connection therewith, ought not to have visited upon them any of the consequences resulting from the alleged mismanagement, misappropriations, and faults of others whose actions they could not control and for whose conduct, as hereinbefore stated, they were in nowise responsible.

And these defendants, further severally answering, say that they or any or either of them, to the knowledge or belief of others or other of them, do not know and have never been informed, save by the said complainant's said bill, whether the investment in Confederate scrip or bonds or the purchase with $41,000 out of said fund of the bonds of the State of Florida was or were made as in said bill stated. They believe there was a resolution of like character and effect as that referred to in said bill adopted by their predecessors to lend to or exchange with the State of Florida $45,000 in treasury certificates, but whether said exchange or loan was made or not these defendants nor can any or either of them, upon the knowledge, information, or belief of the others or other of them, state, but they believe that if said loan or exchange was made it was for interest-bearing bonds of said State, and was made with a view of benefiting said fund, said treasury certificates bearing no interest and in conformity to the letter and spirit of said internal improvement law with reference to its investments, &c.; and they also believe that their predecessors also adopted a resolution, of like character and effect as that stated in said bill, to invest in the sinking fund so much of the money in the hands of Moses Taylor as had not,
370 prior to August, 1867, been applied to purchasing bonds outstanding of the said Florida Railroad Company, and that said resolution was not carried into effect; and they also believe that their predecessors did, out of the fund in the hands of said Moses Taylor, purchase a bond of the State of Florida from Edward H. Dickerson of the amount and at or about the time stated in said bill; that there is a bond of this character among the assets now in the possession of this defendant, John S. Adams, who is at present acting as the treasurer of said —, belonging to the sinking fund of the said Florida railroad, but as to the value of said bond

at the time of its alleged purchase these defendant do not know, nor can any or either of them state, and they again reiterate that they were not then in office and did not have, as trustees of said fund or otherwise, at any time any connection with said alleged purchase.

And these defendants, further severally answering, say that they, these defendants, are not nor are any or either of them nor are their now co-trustees or former co-trustees, to the knowledge, information, or belief of these defendants, indebted to the said trust fund, nor have these defendants or any or either of them, to the knowledge, information, or belief of the others or other of them, nor have their now co-trustees or former co-trustees, participated or joined with others not trustees of said fund in fraudulent and illegal acts with respect to the said fund, as stated in said bill.

And these defendants further deny that these defendants or any or either of them, to the knowledge, information, or belief of the others or other of them or their now co-trustee or severally or
371 any or either of them, have fraudulently misapplied or wasted the land belonging to the said fund, as in said bill stated. On the contrary, they aver that the acts and doings of the trustees of said fund since these defendants have been connected therewith in the disposal and disposition of the lands belonging to the said fund were and have been in good faith and in the exercise of the discretion vested in them by the law creating their said trust and not without the scope of their power or contrary to the spirit, objects, and purposes of their trust.

These defendants, further severally answering, say that they are advised and believe that the trustees of the said fund adopted a resolution to sell to the Pensacola and Louisville Railroad Company swamp and overflowed lands within six miles of each side of the line of said road upon the completion of said road, but that nothing further has been done in the matter; that the road has not been completed, and no lands have been conveyed to it, and they deny that in the act adopting this resolution the said trustees violated the law of their trust or in any manner prejudiced the rights of the complainant, and they deny that the said trustees have made any donations of lands to the said Pensacola and Louisville Railroad Company, as in said bill stated.

These defendants, further severally answering, say that a resolution was adopted by the immediate predecessors of these defendants on or about the 26th day of October, A. D. 1867, a copy of which they annex hereto, marked Exhibit A, and pray that this may be taken and considered as a part of this their answer; that this is the resolution to which they are advised the said complainant re-
372 fers in his said bill as a resolution to grant certain swamp, overflowed, and internal-improvement lands to one Hubbard L. Hart; that the said resolution having been previously adopted before these defendants or the — with which they are connected came into office, and the said Hubbard L. Hart having in part performed, as these defendants are advised and believe, his contract thereunder, and having already received a conveyance of a large portion of the land to which he was entitled, and believing it to be the

interest of the said fund to complete and carry out in good faith the provisions of the said resolution, a conveyance was made to the said Hart for the balance of the lands to which he was entitled; that before completing the said contract with the said Hart their co-trustee, Frank W. Webster, surveyor general, &c., was sent by the trustees to inspect and examine the work done by the said Hart in cleaning out said river; that he made such examination, and, upon a favorable report from him and upon satisfactory proof from the said Hart of his expenditure in said work, the said trustees felt bound to carry out the resolution adopted by predecessors as aforesaid; that the labor and expenditure of the said Hart were, as these defendants are informed and believe, estimated at cash prices, and the lands conveyed to him were conveyed and sold to him at the same prices that they were sold to others, no discrimination being made in favor of the said Hart in this respect; that, as results following their action in this behalf, one hundred miles, at least, of said Ocklawaha river has for the first time been made navigable by steam; that boats are now running up and down said river; that large bodies *and* of swamp and overflowed lands have been drained
373 and relieved from inundation; that a new and valuable trade has been opened up into a comparatively new and unsettled country by the communication thus established, inducing immigration and thereby bringing into the market and enhancing the value of the lands belonging to said fund; that the security or claim of the said complainant, instead of being prejudiced or injured, has been advantaged and made more valuable; and these defendants insist that in carrying out the resolution adopted by their predecessors aforesaid the trustees acted not only in accordance with their duty and within the scope of the powers given to and vested in them by the law of their trust, but in accordance with the legal and equitable obligations resting upon them to complete and carry out, upon their part, in good faith a contract already in great part performed by the other party thereto; that this contract with the said Hart is the only contract or agreement respecting the lands of the said fund which has been fully completed and ended since the present trustees have been in office. These defendants, further severally answering, say that they or either or any of them are not informed, save by the complainant's said bill, of adoption or existence of any such resolution or contract as that therein referred to with the Florida Canal and Inland Transportation Company; that if any such resolution was adopted it was adopted before these defendants came into office; that no such resolution or any resolution concerning said company has been adopted by the trustees of said fund since these defendants or either of them have been connected there-
374 with; they are satisfied that no such resolution was ever carried into effect by their predecessors, and they know that these defendants have taken no action whatever to carry out any such resolution or contract with said company; they believe that if any such resolution was adopted or any such sale contemplated it has long since been entirely abandoned, as neither the said company

or any one in its behalf has ever in any way brought the matter to the attention of these defendants.

These defendants, further severally answering, say that the trustees of this fund have conditionally deeded or conveyed to the corporation mentioned in said bill as the Southern Inland Navigation and Improvement Company several hundred thousand acres of swamp and overflowed lands, the precise quantity they cannot now state, on the eastern coast of the State, the lands to be sold and the proceeds thereof to be paid over to the said company on the progressive completion of the work and only as it is completed, and that upon the stoppage of the work or its abandonment the lands are to revert to the fund; that the work in a canal from the lower St. John's river to Biscayne Bay — to be completed according to contract in the shortest possible time and within fixed limits, and when completed to be navigable for steamboats; that the opening and building of said canal will redeem from partial inundation and largely enhance the value of adjacent and neighboring lands belonging to said fund; that no lands except swamp and overflowed lands have been conveyed as aforesaid. They insist that the action of the trustees in this behalf has not in any respect been illegal, fraudulent, or prejudicial to the rights of said complainant or any one else having any claim upon said fund;
375 that such action has been within the legitimate exercise of the powers and discretion vested in them and in furtherance of the primary objects and purposes of the trust; that the aiding and encouragement of works of improvement of this character through sections and portions of country where without such works inhabitation and settlement could not be induced is the only way by which the land could be brought into market and made available for any purpose; that without such measures to effect its drainage the reclamation where it is possible to drain and reclaim hundreds and thousands of acres of the land belonging to said fund would forever remain entirely worthless; that the said complainant, on account of his alleged large interest in the lands belonging to said fund as the source to which he must necessarily look for the security and ultimate payment of his coupons, cannot be otherwise than greatly benefited by works of this character, and these defendants believe and aver that he has been so benefited. These defendants, further severally answering, say that the Florida Lumber, Land and Improvement Company referred to in said bill was incorporated by the Legislature of the State of New York, and, as these defendants aver, owes its corporate existence entirely to the said State of New York; that they are informed and believe that the corporate name of said company in the original act of corporation, to wit, "The Florida Lumber, Land and Improvement Company," has been changed by an act of the Legislature of the said State of New York to that of the "Florida Improvement Company." They are informed and believe that the said company, under its contract with the trustees of said fund,
376 has selected some 300,000 acres of lands; that said company has paid for 100,000 acres of land in past-due coupons for the payment of which said lands were pledged upwards of $10,000, and

that 100,000 acres of land have been conveyed to said company under its contract with the trustees of said fund, and no more; that the payments were made to the treasurer of said — on the 11th day of October, 1870, the coupons being received at par; that the land selected by said company and conveyed to it as aforesaid were almost exclusively swamp and overflowed lands; that it is impossible now to state the exact amount and locality of each; that to do this would require a great deal of time and be a most burdensome expense, besides these defendants cannot give accurate information in the absence of their codefendant and co-trustee, Frank W. Webster, surveyor general, &c.; that the Frank W. Webster, surveyor general, &c., is the proper custodian of all books, records, maps, &c., concerning or belonging to the lands of said fund, and occupies, as these defendants are informed, the same position and relation to the present trustees that the register of public lands under the former State government occupied to the prior trustees; that the said Frank W. Webster has been absent from the State since on or about the first of February last, and is now, at the time of the preparation of this answer, still absent; that the absence of the said Webster has been occasioned, as these defendants are informed and believe, by the extreme illness of his wife; that his absence has been one of the causes which has prevented these defendants from putting in their answer to the said bill of complaint at an earlier day, inasmuch as these defendants could not answer as
377 fully and completely with respect to the land matters of said fund in his absence as if he was present with his assistance and information; that notwithstanding the fact that these defendants have access to the books and papers connected with the land matters of said fund, yet in the absence of the said Webster, not being as familiar with the books and papers in his office and specially belonging to his department as he is, they could — even if at all, without a great deal of labor and the expenditure of a great deal of time, answer accurately and precisely as to certain of the matters inquired of in said bill.

These defendants, further severally answering, say that with respect to the Florida Lumber, Land and Improvement Company, otherwise called the Florida Improvement Company, *that* they are informed and believe that the said company has an office in the city of Jacksonville, in this State, and that one Mickles was its agent at that place, but that one E. C. Studwell is now its agent; that they are further informed that the capital of said company was originally $2,500,000, but they are informed and believe that the capital of said company has been reduced to $25,000, and that this latter sum or capital has all been paid in. They are not informed where or in what this capital consists, but are informed and believe that the said company has expended upward of $50,000 in carrying out its contract.

These defendants, further severally answering, deny that the action of the trustees of said fund in entering into and carrying out in part the contract with said last-mentioned company as aforesaid has been illegal or fraudulent or in any manner in violation of their

trust or *judicial* to the rights or interests of the said complainant.

378 These defendants, further severally answering, say that, under the sixteenth section of the said act to provide for and encourage a liberal system of internal improvement in this State, the trustees of said fund are invested by law with the discretion and power to fix the price of public lands included in their trust, having due regard to their location, value for agricultural purposes, or on account of timber *on* naval stores, and to make such arrangements for drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the internal improvement fund and the settlement and cultivation of the land, and further authorizing and empowering the said trustees to encourage actual settlement and cultivation of said land by allowing pre-emptions under such rules and regulations as they should deem advisable: Providing, however, That in no case should a pre-emption for more than a section of land be granted to any one settler; that under the power and authority thus given by law to the trustees of said fund all prior trustees since the first creation of said fund and the present trustees have always claimed to exercise, and have fully exercised without objection or complaint from any of the parties in interest, so far as these defendants are advised, the right to fix the price of the lands included in the trust, and to alter, change, and vary the same from time to time as in their judgment they deem best for said fund, having due regard for location, value, &c.; that in some instances it has been found that the prices fixed in the first instance were too low or too high, owing to the settlement or improvement of certain sections or the decrease in prosperity of other sections; that in all cases the

379 trustees, as these defendants are informed and believe, have endeavored, in the exercise of the judgment and discretion confided to them by the law, to regulate the prices of the lands so as best to promote the interest of said fund, enhance its value, and increase the security of parties having a claim thereupon; that they have felt themselves fully authorized and never doubted their right to make arrangements for the drainage of the swamp and overflowed lands belonging to said fund by paying for such drainage and improvement in lands of the fund, and in like manner they have felt themselves fully authorized and empowered to make such arrangements and give such inducements as would encourage actual settlement of said lands belonging to said fund, the drainage and settlement of said lands, as they allege, being the primary object of the grant to the State and one of the chief duties with which they are charged by the law creating the trust, a duty requiring extensive, prompt, and continued action; that one of the leading objects kept in view in the administration of said fund was by every legitimate means and proper arrangements to bring the lands into notice, reclaim and redeem from overflow and inundation in all cases where practicable, and, where an advantageous contract to effect this could be made, induce settlement, and thus make the lands more valuable, to the end that the time might be hastened when the fund would be relieved and released from all present claims upon it and could be

used for new works of internal improvements calculated to promote the welfare and prosperity of the State.

These defendants, further severally answering, say that they
380 are not advised or informed of the purpose of the Legislature of the State of Florida in creating at the first session thereof sundry corporations, save what are indicated in and by the acts of incorporation themselves; that they have no reason to believe or just ground to suppose that the Legislature desired or intended by the passage of said acts to enable any one to perpetrate a fraud upon said fund, and as to the trustees having previously made fraudulent grants of the land of said fund, which operate as an inducement to such legislation, wholly deny every and all the allegations in this behalf in the said bill contained.

These defendants, further severally answering, say that they do not believe that any of the parties defendant to said bill of complaint with whom the trustees have entered into contracts respecting the land of said fund as aforesaid had any notice whatever or any reason to suspect that the action of the trustees in that behalf was illegal and fraudulent, as in said bill alleged; on the contrary, so far as these defendants are informed, they believe that the parties so contracting with said trustees acted in good faith and upon the belief and advice that their contracts were fully authorized, and it was the impression and belief of these defendants and each of them at the time that the same was binding upon such parties; otherwise they would not have taken such action.

These defendants, further severally answering, say that they admit that these defendants, the present trustees, have not demanded and that the purchasers of the said Florida railroad have not paid the sinking fund of one-half of one per cent. semi-annually on the entire amount of the bonds issued by the said Florida Railroad
381 Company; that they have not demanded or required of the purchasers of said road the payment of the sinking fund aforesaid on any greater amount of bonds than those outstanding at the time such payment was to be made, and in this respect they allege that they have conformed to the precedent of their predecessors and as they are advised to their duty and the law in that behalf; and these defendants deny that it is their duty or that they are required by the "Act to provide for and encourage a liberal system of internal improvement in this State" to exact from or compel the purchasers of said Florida railroad to pay the sinking fund aforesaid on the entire issue of bonds ever made by said company under said internal improvement act when nearly the whole thereof have been taken up, purchased, surrendered, and cancelled, or that it is their duty to require or exact the payment of said sinking fund or of any of said bonds except such thereof — may be outstanding at the time the payment to the sinking fund as aforesaid is to be made; that the sinking fund of the said Florida railroad which has accrued and become due and payable by the purchasers of said road since the present trustees have been in control of said fund has been fully paid except $—; that the said purchasers are ready to pay and settle this amount as soon as certain set-offs claimed by them against

said sinking fund can be adjusted; that the said complainant instituted a suit in the supreme court of the State of New York to recover and get possession of the sinking fund of said road deposited by their predecessors with Moses Taylor, as hereinbefore stated; that the present trustees, on account of this action on the part of the said complainant, were compelled to employ counsel to de-
282 fend said suit; that the said Edward H. Dickerson, the purchaser from whom said sinking fund was due, was employed by the trustees and authorized to *respect* them in the defence of said suit in New York; that in so doing very considerable expense for counsel fees and costs of court was incurred, and that the said Edward H. Dickerson, by whom such counsel fees and costs were paid, amounting to about $1,500, claims that the same is a just and legitimate set-off to the demands against him on the sinking fund account, having been necessarily incurred and made in the protection and defense of the said sinking fund itself; that the said trustees were fully sustained in their defense of said suit, the decision and judge of said court being in their favor; that but for this vexatious and expensive proceeding on the part of said complainant the whole of the sinking fund from the said Florida railroad would have been paid as it fell due, and that as soon as this matter is adjusted it will be promptly paid, there being no danger of its loss.

These defendants, further severally answering, say that they admit that the said complainant did address letters to D. L. Walker, one of the predecessors of these defendants, and to this defendant, Harrison Reed, as in said bill set forth. These defendants, further answering, say that they deny that the trustees have in any manner defrauded or injured the said complainant, or that they have in any manner discriminated against him in their management of said fund; on the contrary, they aver that they have shown every disposition and made every effort in their power to meet and adjust all his claims upon said fund; that it was at the instance of the said complainant, as these defendants are informed and be-
lieve, that the trustees consented to take past-due coupons
383 in payment for the lands of said fund, the said complainant having a large amount of coupons and desiring to make them available for this purpose so as to realize on them at once without awaiting the sales of the land, which would require a great many years; that the said complainant is fully advised that the trustees have no other means of paying his said coupons except by paying him in land; that they are willing, upon fair and reasonable terms, to pay him in this way and have offered to do so. If unwilling to take lands which constitute the only fund to which he can look for the payment of his coupons under the law it is not their fault, and if the said complainant continues to place obstacles in the way of their arrangement for the drainage and improvement of the lands so as to induce settlement, bring to market, and enhance their value they cannot and do not hope to be able to realize any very great amount from the sale of lands—at least for many years to come; that while the State of Florida has recuperated as rapidly from the effects of the late war as perhaps any of the Southern States, and now gives as

fair promise of future prosperity, yet there has not been upon the part of the people living in the State, owing to the *security* of money for investments and to the fact that most of them already possessed as much land as they desired, any very great demand for lands to be paid for in cash; that to facilitate the sale of the lands belonging to said fund, and to induce persons to buy and settle upon them when they would not otherwise have done so, the trustees, with a view of benefiting the fund, took in payment for some of the land sold what is commonly called State scrip, being warrants drawn by the
384 comptroller or the treasurer of the State, or certificates of indebtedness issued by the treasurer of the State, which were convertible into interest-bearing bonds of the State and with which they could, as they have done, buy up coupons which were a charge upon the fund.

That the trustees have been willing, as far as they were able, to take up the past-due coupons held by the said complainant, and have ordered to do so, but that the said complainant has refused to take State scrip, while others have received such scrip for past-due coupons held by them, and the trustees have thus been enabled to discharge and relieve the fund of a portion of the charge upon it in this way; they insist that in this matter they have not committed a breach of trust or in any way injured or impaired the rights of the said complainant; they further aver that the trustees have, as far as able with the means in hand and with honesty and impartiality to all, paid and satisfied all the the just claims and demands against said fund.

These defendants, further severally answering, say that they deny that either under the said act of June 6, 1855, or under any other act or law, that they are, as in said bill charged, a corporation or accountable as such; that they are advised and believe that none of their predecessors, from the passage of said act down to — time of the installation of these defendants into office, ever acted or claimed to act in the capacity of a corporation; that the trustees of said internal improvement fund have never had or used a corporate seal; that all the conveyances and instruments under seal executed by them have been executed by each trustee signing his own
385 name and affixing his own private — or scroll thereto; that they are advised and believe that the certificates or endorsements on the very bonds which the complainant claims to hold was made by such individual trustee signing his own name thereto; that shortly after the passage of the said internal improvement law, as these defendants are informed and believe, the persons then first acting as trustees thereunder were advised by very eminent counsel that they were simply trustees charged with the administration of a public trust, and that they have always acted under that opinion and belief; that in suits in the — court and supreme court, the latter the court of ultimate resort in this State, the said trustees were made, treated, and considered as parties thereto simply as trustees and not as a corporation.

These defendants, further severally answering, say that there are other creditors of said fund besides the said complainant who hold

coupons and are entitled with the said complainant to be paid *pari passu* out of said fund; that the coupons so held by these other creditors, according to the best information these defendants can at present obtain, amount to several hundred thousand dollars, and that in all respects they rest upon an equal equity and are an equal charge upon all the lands of said fund; that the trustees have very recently proposed to the said complainant to pay the entire amount of his past-due coupons in lands belonging to said fund or to issue to him what are called land floats, to be located on the land
386 of said fund, said floats to be assignable, thus giving to them a value and placing the said complainant in a position to realize on them at once if he did not desire himself to take lands; that they have also endeavored to effect a settlement with said complainant of all his demands against the trustees on account of the principal and interest of his bonds upon what they believed was a fair and just basis, but that the said complainant has refused to accede to any of their propositions for settlement, and especially to take lands for his coupons, when he well knows that this is all the trustees have to give him in settlement, setting up as an excuse for his conduct in this behalf that if he should take lands he would be compelled to pay taxes on them, &c., &c.; that the trustees are now willing to take the past-due coupons of the said company in payment for the lands belonging to said fund from time to time as the said complainant may desire to invest them in lands, or they are willing to sell him at one time in a body and at reasonable prices, having due regard to the interests of others who have a claim upon said lands, enough of said lands to pay and take up all the past-due coupons held by him, but they are not willing to surrender to him the whole fund without regard to the rights of others who have an equal claim upon it, and without regard to the rights of the State of Florida, who is entitled to the remainder after the present claims upon it are satisfied, and then take upon themselves the trouble, expense, and annoyance of administering the fund for his especial benefit. These defendants, further severally answering, say that it is not true, as alleged in the amendment to said complainant's
387 said bill of complaint, that the Florida Lumber, Land and Improvement Company created under the laws of the State of New York also exists and has been created under the laws of the State of Florida a body corporate; that they are informed that there is a corporation of very nearly the same name for the sale of lands belonging to the Florida railroad, with its chief place of business at Fernandina, to which, perhaps, the said complainant may refer, but that, as hereinbefore stated, the said New York corporation owes its corporate existence entirely to the State of New York, and is a citizen only of that State, and is not a citizen of the State of Florida.

These defendants, further severally answering, say that a proposition was submitted in behalf of the Great Southern Railway Company to the trustees of said fund by A. C. Osburn, president of said company, on or about the 24th day of November, 1870; that this proposition embraced the drainage and reclamation of certain of the

swamp and overflowed lands belonging to said fund lying along the line of said road, and that in consideration for such drainage and the effect of such drainage in inducing settlement and enhancing the value of the contiguous lands belonging to said fund the said company asked for a conveyance, upon certain conditions, of a portion of the swamp and overflowed lands.

That this proposition was favorably considered by some of the trustees of said fund, while it was objected to by others; that two of the said trustees, to wit, this defendant, Harrison Reed, and this defendant, John S. Adams, signed a deed or paper purporting to be a deed to the said company, dated on or about the 1st day of December, 1870, for 102,000 acres of said lands, conditioned, however,
388 that if the said company did not within eighteen months from the 24th day of November, 1870, relieve the said lands from liability to overflow, then the said lands to revert to the said fund; that the said deed or paper purporting to be a deed has never been signed by any of the trustees of the said bond, and without receiving the sanction and signatures of the other trustees or a majority of the whole number of trustees, the said deed is, as these defendants are advised, wholly invalid *from* the purpose of passing the title to said lands out of the trustees, and that the title to the same is still vested in them, and that the trustees do not now hold or regard the conveyance as binding upon them, or have taken or propose to take any further action in the premises. These defendants insist, however, that if the propositions made by the said Great Southern Railroad Company had been carried out it would have resulted in great benefit to the fund by relieving a large portion of the swamp and overflowed lands belonging thereto from inundation, and their action in connection with the same, as hereinbefore stated, is not, they maintain, in any way a breach of trust, and cannot in any way affect injuriously the rights of said complainant or any one else having an interest in said fund.

To the first interrogatory these defendants, severally answering, say that they believe that the exhibits mentioned therein were correct copies, &c.

To the second interrogatory these defendants, severally answering, say that the said David S. Walker, C. H. Austin, Hugh A. Corlay, John
389 Beard, and John S. Galbraith were the immediate predecessors of the present trustees; that the New York and Florida Lumber, Land and Improvement Company, the name of which, as hereinbefore stated, has been changed to the Florida Improvement Company, is a New York corporation and owes its corporate existence entirely to the State of New York, as these defendants are informed and believe; that there is a Florida company of very nearly the same name, with an office and location in Fernandina, in said State, for the disposal of land belonging to the Florida Railroad Company, but that the New York company above mentioned has never been incorporated in Florida; that the said New York company has an office and an agent in the city of Jacksonville; that Myron S. Mickles was its agent; that E. C. Studwell is now its agent; do not know whether it has other agents in Florida; that amount

of its capital at the date of its corporation was, as these defendants are informed, $2,500,000; are now informed and believe that its capital has been reduced to $25,000, and that the whole of this has been paid in; cannot state where its capital is or in what it consists; it has, as hereinbefore stated, located and selected under its agreement with the trustees, according to the best information which these defendants can now obtain, about 300,000 acres of land; that it has been paid $10,000 in past-due coupons for 100,000 acres of land; that the said payment in coupons was made to the secretary of the trustees of said fund on the 11th day of October, 1870; that the said coupons were taken at par; that the lands were selected almost exclusively from the swamp and overflowed lands; that, as hereinbefore stated, they cannot now state which were selected from the internal improvement lands, which consisted originally of
390 500,000 acres, or which were selected from what are called the swamp and overflowed lands, nor can they now give the locality of each or either class of said lands; that they do not know at what price it is offering its lands, nor are they able to state whether it has or not drained any of such lands. They are informed and believe that said Mickles has bought lands from said fund at the price fixed or prevailing at the time of purchase or for the same price that other persons could have bought the same lands for. They cannot now state of what class or how many acres were bought by him from said fund.

To the third interrogatory these defendants, severally answering, say that there has been conveyed to the said Hubbard L. Hart about 21,000 dollars' worth of land belonging to said fund under the agreement hereinbefore referred to as made with him by their predecessors, a copy of which is filed with this answer, marked Exhibit A. The precise quantity of acres they cannot now, in the absence of their co-trustee and codefendant, Frank W. Webster, surveyor general, &c., state. The lands conveyed to him were sold and conveyed at the same prices that they were sold and conveyed to others—the swamp and overflowed lands at fifty cents and the internal-improvement lands at the estimate value, varying from one dollar and twenty-five cents to five dollars per acre. The work done by said Hart was estimated at cash prices; that they are informed that the said Hart expended upwards of $21,000 on said work; that the said Hart did furnish accounts and vouchers for expenditures in said work. Upon examination they find, among the papers belonging to said trust fund, accounts and vouchers for such
391 expenditures, true copies of which they annex to their answer, marked Exhibits B, C, D, E, and F. These accounts, as will be seen by reference thereto, are duly sworn to by creditable persons; that, as hereinbefore stated, the final settlement with said Hart was not made until the work was done by him, was personally inspected, examined, and favorably reported upon by the said Frank W. Webster, surveyor general, &c.; that of the lands conveyed to the said Hart they are informed and believe that about $3,519\frac{80}{100}$ acres were internal-improvement lands, and as to all and singular the other matters inquired of — the said interrogatory, with respect to

the lands conveyed to the said Hart, these defendants have hereinbefore answered the same as fully and completely as they or either or any of them are able to do.

To the fourth interrogatory these defendants, severally answering, say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they are or either or any of them are able to answer the same.

To the fifth interrogatory these defendants, severally answering, say that they have already, by what has been hereinbefore stated, answered interrogatory as fully and completely as they or either or any of them are able to answer the same.

To the sixth interrogatory these defendants, severally answering, say that they have now no means of forming an estimate of the number of acres of land drained or the cost of such drainage. To enable them to do this they would be compelled, either personally or through an agent, to inspect and examine the lands, which would require much time. The only contract completed is the con-
392 tract made with Hubbard L. Hart by the immediate predecessors of these defendants, and which the present trustees carried out as hereinbefore stated. These defendants are informed and believe that the lands along each side of the Ocklawaha river for one hundred miles have been greatly relieved from inundation on account of the work done by said Hart, but to what extent these defendants cannot, without an examination and report, undertake to say.

To the seventh interrogatory these defendants, severally answering, say that they do not know nor are they informed as to how much was received per annum by these predecessors from sale of trust lands; for information on this point as well, as to the amount received per annum by the present trustees, they respectfully refer to the published reports of the trustees accompanying the Governor's message, to be found in the documents accompanying the journals of the senate and house of representatives of the Legislature of said State, and, as public documents, are accessible to the said complainant and all others interested. The predecessors of the present trustees and the present trustees have published annually in connection with the Governor's message two reports—one of their secretary, which is an abstract of their doings, and the other the report of their salesman, which gives information with reference to the lands sold, &c. They find by reference to the report of F. W. Webster, surveyor general, &c., appended to the senate and assembly journals of the second session of the Legislature of said State, begun and held on the 5th day of January, 1869, an estimate of the internal im-
393 provement lands and swamp and overflowed lands belonging to said fund and remaining unsold on the 31st day of December, 1868, as follows: Swamp and overflowed lands, 9,855,720.55 acres; internal improvement lands, 230,487.37 acres.

Whether these estimates are to be relied on as accurate or not they cannot say; that it is impossible for them to give accurate information in the absence of their co-trustee, the said Webster, who, as hereinbefore stated, had charge of the maps, books, records, and

papers connected with the land matter of said fund, nor can satisfactory or reliable information be obtained without examining the books and records and the making of abstracts therefrom, which would require a great deal of time. With all and singular the other matters enquired of in said interrogatory these defendants, by which they have hereinbefore stated, have answered the same as fully and completely as they are now able to do.

To the eighth interrogatory these defendants say that they have already *been*, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they or either or any of them are able to answer the same.

To the ninth interrogatory these defendants, severally answering, say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they or either or any of them are able to answer the same.

To the tenth interrogatory these defendants, severally answering, say that this defendant, John S. Adams, who is at present acting as treasurer for the trustees, has in his hands about $85,000 of coupons of railroad bonds guaranteed by the fund and about $16,000
394 in what is called State scrip convertible into interest-bearing bonds of the State of Florida; there is a small amount of money—not sufficient to meet the expenses of sale—pending litigation and costs.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are wiliing and ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PAPY & PEELER AND
J. B. C. DREW,
Solicitors and of Counsel for Defendants.

UNITED STATES OF AMERICA,
Northern District of the State of Florida, } ss:

On this the 6th day of May, A. D. 1871, before me personally appeared Harrison Reed, Governor of the State of Florida, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

HARRISON REED.

395 Sworn to and subscribed before me this 6th day of May, A. D. 1871.

[SEAL.] PHILIP WALTER,
Clerk U. S. Circ't Court, Northern Dist. of Florida, 5th Judicial Circuit.

UNITED STATES OF AMERICA, *Northern District of Florida,* } ss:

On this the 6th day of May, A. D. 1871, before me personally appeared Simon B. Conover, treas. of the State of Florida, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

S. B. CONOVER,
Treas. State of Florida.

Sworn to and subscribed before me this 6th day of May, A. D. 1871.

[SEAL.] PHILIP WALTER,
Clerk U. S. Circ't Court, 5th Judicial Circuit, Northern Dist. of Florida.

Indorsed: Circuit court of the United States, fifth circuit, northern district of Fla. Francis Vose, complainant, *vs.* Harrison Reed *et al.*, trustees of the internal improvement fund, *et al.*, defend-
396 ants. Filed May 18, 1871. J. E. Townsend, clerk. Papy & Peeler & J. B. C. Drew, solicitors for defendants.

UNITED STATES OF AMERICA, *Northern District of Florida:*

To the judges of the circuit court of the United States for the northern district of Florida:

The petition of Francis Vose, a citizen of the State of New York, respectfully shows that, on the 6th day of December, in the year 1870, a writ of injunction was issued by his honor Judge Woods, in the case of your petitioner, complainant, against The Trustees of the Internal Improvement Fund of Florida *et al.*, enjoining and commanding Harrison Reed, Robert H. Gamble, Almon R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund of Florida, and their successors that they should desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855, which had created the trust, fixing the price, and allowing pre-emptions of the same in obedience to all the restrictions of that act; that they should desist from selling said land for scrip or State warrants of any kind or for aught else than current money of the United States; that they should desist from lending or investing, appropriating, disposing of, or using

any of the moneys or property of said trust fund except in
397 applying them to the creating of the sinking fund provided by said act of 1855 and so applying them in strict accordance with the provisions of that act when said moneys properly belong to said sinking fund or in payment of the coupons of said bonds when said moneys have proceeded or shall proceed from the sale of said lands, and that they should desist from paying said coupons in any other mode than in the order of their priority, fixed by the date of their coming to maturity, paying first such as first become due and the others in the order in — they fell due.

And your petitioner further shows that, on the — day of ——, in the year 1871, a petition was presented to his honor Judge Woods charging the said trustees with violations of the said injunction and praying that a writ of attachment might be issued against them for contempt; that on the 18th day of May following the said the trustees, in response to an order granted upon said petition, appeared before his honor Justice Bradley, at Jacksonville, Florida; the argument was heard by him upon the original and amended bill and answers thereto on motion to dissolve said injunction, and upon the said petition and answers thereto on motion for a writ of attachment; that his honor refused to dissolve said injunction and held, among other things, that the said the trustees had violated the said injunction in this: That prior to its being granted the Florida Improvement Company had deposited $10,000 in railroad coupons in payment for 100,000 acres of land, which Conover, the treasurer, refused to receive. They were not worth more than 10 to 30 cents per
dollar; that since the injunction Conover was displaced by
398 J. S. Adams, who accepted them at par, and the sale was perfected; and his honor decreed that by the first day of the next approaching term of this honorable court the said the trustees should secure a reconveyance by the Florida Improvement Company of the said 100,000 acres of land, or that they should be held guilty of contempt and dealt with accordingly.

And your petitioner further shows that during the month of June immediately thereafter the said the trustees proceeded to re-enact the same contempt by selling 23,116.01 acres of land to the Southern Inland Navigation Company, or to W. H. Gleason, for $28,116.01, receiving in payment therefor coupons which had been previously deposited with the said S. B. Conover, and also during the same year did sell other lands for $2,040.43, receiving like payment in coupons.

And your petitioner further shows that intermediate the 5th day of April, 1871, and the 6th day of January, 1872, there were sold some 10,000 acres or upwards of the lands of the internal improvement fund partly for cash and partly for coupons; that the aggregate amount realized for said sales was $8,395.69; that while the whole of these sales were nominally effected by the salesman of the said trustees the larger part were really effected by Williams and Swann, a firm of land agents and dealers, and as such said Swann being publicly partners of the trustees or trustee, acting as secretary, salesman, and treasurer of said board under

pretence of a contract between the latter and the said trustees, by which said pretended contract the said Williams and Swann were to select land coming to the State
399 under the act of Congress of September 28, 1850, and to furnish the necessary lists, tract books, and maps, to be paid in lands at $1 per acre; that of the said $8,395.69 the said Williams and Swann thus took in and retained for themselves $4,100; that since the month of July, 1871, the said Williams and Swann have received an aggregate of $10,000, and under the provisions of said alleged contract are still to receive $30,000.00 more for their pretended services; that the labor rendered by the said firm under the said pretended contract is altogether nominal, the said Williams having been already and previously engaged by the Government of the United States to make surveys of the said lands; that the lands so to be selected and mapped by them are now confessedly worthless, and must of necessity remain so for many years to come; that, *of* making the compensation of the said land agents a lien or burden upon the said lands so to be selected and mapped by them, the said trustees have been and now are recklessly and fraudulently diverting to their use the proceeds of the sales of other lands which should be applied to the payment of the coupons held by your petitioner and others; all of which actings and doings of the said trustees in the sale of said lands for coupons and in the conveyance — the sale of said lands through and for the benefit of said Williams and Swann are in direct violation and in renewed contempt of the injunctional order of this honorable court.

And your petitioner further shows that during the said year 1871 the treasurer of the said board of trustees was authorized to exchange and did actually exchange non-tax-paying scrip at par for coupons to the amount of $15,000; that the said treasurer,
400 upon his recent examination before the master, testify*ing* that he could not tell the class of coupons so received in exchange; but your petitioner avers that said coupons must have been of junior date to coupons held by himself, it being impossible that coupons to that amount senior to his own could have been at that time in circulation, and that this payment by exchange was made without any notice whatsoever to him, or any opportunity given to him to participate in the benefit resulting to the holder of coupons from this action, although your petitioner shows that his claim had been pointedly brought to the attention of the treasurer of said board, as will appear from the following letter:

JACKSONVILLE, *February 24th*, 1871.

J. S. Adams, Esq., treas. trustees of the internal improvement fund.

DEAR SIR: The amount of coupons due March 1, 1861, on bonds of the Florida railroad held by me is $6,825, and the same amount has been falling due since every six months without anything having been paid upon them, notwithstanding my protests and notices of May 20th and December 1, 1868, for the purpose of holding the trustees personally liable.

As I am informed that you are now treasurer of the board, I have to request payment of the coupons above mentioned, due March 1, 1861, or of the proportion coming to me from the sales of lands before and since the injunctional order of the 7th December last.

It is, perhaps, proper to repeat in writing what I have often mentioned verbally that there *are* a large number of coupons not canceled, for which payment is claimed, which are not properly outstanding nor chargeable to the fund.

Yours respectfully, F. VOSE.

401 Your petitioner shows that the above was handed to Mr. Adams February 21st. Upon making application, February 25th, for a reply Mr. Adams stated to him that before making any payment of coupons he would require authority from the board of trustees; and your petitioner avers that said action of said trustees in paying said coupons was secret, fraudulent, — designed to create and to give fraudulent preference and in clear violation of the said injunction.

And your petitioner further shows that at the close of the year 1866 there remained in the hands of the said trustees from the proceeds of the sale of the said Florida road a balance of $53,500, which passed into the sinking fund provided for the payment of the bonds of the said railroad company still outstanding, but these were in number two hundred and twenty-five, of which your petitioner is the holder of one hundred and ninety-five; that had said amount, $53,500.00, been at that time applied in response to a proposition which was shortly thereafter made, and as, under the said act of 1855, it might have been applied, to investment in the said the outstanding bonds, with the interest accruing upon it, it would have — tantamount now to an accumulation in the said sinking fund of $78,281.00; that since the month of July, 1868, there has been received from said Florida Railroad Company by the incumbent trustees in the semi-annual payment of one-half of one per cent. the sum of $8,560.00, or thereabouts; and your petitioner further shows that had a similar disposition been made of these amounts they would also have been tantamount to a like accumulation of
402 $9,587, making an aggregate sum of $87,868; but the said trustees, retaining the said moneys in their own hands, have reduced the said fund to a value not exceeding $35,500, incurring loss of $52,368, or thereabouts, within the short period of six years; and your petitioner charges that this heavy loss has resulted—

1. From investments at par in State bonds and State scrip when these securities were far below par.

2. From unauthorized, illegal, and fraudulent exchanges made of tax-paying for non-tax-paying State scrip, the former being worth 100 per cent. more than the latter.

3. From the substitution, by individual members of the board, of State scrip for the money actually collected by them from the said Florida Railroad Company when the said scrip was 50 per cent. be-

low par, retaining the money and turning the scrip into the fund at par.

4. From the heavy payments to counsel who have presented them in their efforts to impede your petitioner in the assertion of his just rights, and who have defended them in their repeated violations of the injunctional orders of this court, said counsel so defending them being at times members of their own board.

And your petitioner further shows that on the 31st of May, 1871, the said trustees entered into articles of agreement with the Jacksonville, Pensacola & Mobile Railroad Company by which they covenanted to convey to the said party of the second part all the lands of the said improvement fund of Florida held by them in trust, with certain exceptions, and in consideration of certain covenants and undertakings; which said articles were
403 signed by Harrison Reed, Governor; S. P. Conover, treasurer; James B. C. Drew, attorney general, and J. S. Adams, commissioner of immigration, etc.; and on the 16th day of December following, by consent of the said trustees, a decree was rendered by his honor Judge Woods which established the indebtedness of the said fund to your petitioner, ordered that within 30 days from its date the securities and money constituting the said sinking fund to be applied to payment of your petitioner's bonds should be valued and should be taken by your petitioner at such valuation in exchange for bonds of the said Florida Railroad Company, and that semi-annually, within ten days after receipt of the same, the said trustees should in like manner invest the said amount of one-half of one per cent., to be paid by said company into said sinking fund; and ordering further that the said articles of agreement between the said the trustees and the said The Jacksonville, Pensacola & Mobile Railroad Company be affirmed, made valid, and final upon certain conditions; among them the payment by the said railroad company to your petitioner of his claims so established as aforesaid; all of which will more fully appear from said decree itself, now of record in this court, to which your petitioner prays to refer as part of this his petition.

And your petitioner further shows that the said the trustees did wholly fail and refuse to obey those clauses of the said decree which relate to the said the money and securities constituting the said the sinking fund, although frequently applied to by your petitioner so to do, at times pretending that the said The Jacksonville, Pensacola
& Mobile Railroad Company, having failed to comply with
404 their part of said contract so as aforesaid confirmed by said decree, they, the said trustees, were wholly relieved from complying with the orders of this court in reference to the disposition of the said the sinking fund, whereas your petitioner charges that the two subject-matters were wholly distinct the one from the other, the said the disposition of the sinking fund being an arrangement wholly independent of the said articles of agreement to which

your petitioner was not originally a party, and which he consented should be embraced in said decree only on condition that his said claim should be paid within a certain time, and which said disposition of said sinking fund was eminently wise, just, and equitable, while it was in full accord with the provisions of the act of 1885. And finally, the said trustees, pressed by your petitioner to the performance of their duty under said decree, took refuge in the pretence that they had never in fact consented to its rendition; that the member of the board who signed that consent was without authority to sign it; that the attorney who claimed to represent them was without authority to do so, and that the board itself was without power so to dispose of the lands of said trust, whereas your petitioner charges that all except one of the trustees had, months prior to the rendition of said decree, solemnly consented, under hand and seal, to exercise the said power, the existence of which they now deny, to the extent of conveying to the said railroad company the entire trust domain, consisting of some seven or eight millions of acres, while under the provisions of said decree the amount to be conveyed was but little over some two millions of acres, for the consideration in money,
405 and for the lands to be conveyed under said decree they would have received, as appears by the report of the commissioner of lands and immigration, about seventy-five cents per acre, while in the other conveyances already made and contracted for no payment whatever is required, or not exceeding five or ten cents per acre, and the said the trustees, instead of obeying the said decree, have actually placed on the records of this court a motion to vacate the same.

Your petitioner shows that all of these actings, failings, and refusals of the said the trustees are not only oppressive to him, but are in violation and in open contempt of the authority and mandates of this honorable court, and that so far as having been stayed by the injunctional orders hitherto granted the work of reckless and fraudulent waste goes on, both in the moneys and securities of the sinking fund and in the sale of the lands and the disposition of the proceeds resulting therefrom.

And your petitioner further submits that it has been made to appear from the testimony already taken by the said master, and from the public reports of the said board of trustees and its officers, that its business is conducted in the loosest manner; that while the public report of the commissioner of immigration to the Governor for the last fiscal year would show a balance unaccounted for of receipts over expenditures of some $11,000.00, which must have now increased to some $20,000.00, no books can be referred to for the purpose of investigating how that balance has accrued, the said officer having himself testified before the said master that "there is no book kept by the board showing the receipts and expendi-
406 tures," and the said Simon B. Conover, one of said trustees, having also testified as follows: "The book of record of proceedings of the board is kept by Mr. Adams, but in what place and

where he keeps it I do not know, but I do know that under a resolution of the board he is required to keep — in Tallahassee. There has been several occasions where members of the said board have desired to have access to the books, but could not find them, Mr. Adams being absent from Tallahassee. He keeps an office of collector of customs of the United States, and as commissioner of immigration of Florida, in Jacksonville, and spends but little of his time in Tallahassee. When I was treasurer I made an annual report as such to the board. I am not aware that the present treasurer has made any report to the board."

And your petitioner respectfully submits that while there is thus no check whatever upon the actual waste committed by said trustees there are no sufficient records kept to trace it satisfactorily hereafter and to fix personal responsibility therefor.

And your petitioner further shows that he has just heard and does verily believe that they, the said trustees, have received and either have given or probably will give a favorable hearing to a proposition from the Florida Improvement Compamy to convey to the latter land warrants to the amount of 250,000 acres in payment of $125,000 alleged by said company to have been expended under the agreement between itself and the said trustees, the execution of which was enjoined by his honor Judge Woods; and your petitioner submits that such action would be in clear violation and evasion of said injunctional order.

407 And your petitioner further shows that in prostituting the fund and its management to their own personal benefit and speculations in contracting to convey the lands to corporations without capital or credit, and for considerations so vague and indefinite as to be mere shams, in withdrawing these lands from sale and refusing to sell these remaining at market prices, the litigation and trespassing are greatly increased and the *bona fide* sales and settlement are almost entirely suspended.

Whereupon your petitioner prays that an order may be issued, directed to the said Harrison Reed, Robert H. Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, The Trustees of the Internal Improvement Fund of Florida, and to J. B. C. Drew and any others, their successors, commanding them and each of them to appear upon some day and at some place to be designated by your honors, and show cause, if any they have, why the penalty set out in said writ of injunction should not be inflicted upon them and every of them for and on account of their various acts in contempt of the same;

And why an attachment for contempt should not be issued against them for having failed and refused to obey the said decree rendered against them by his honor Judge Woods as aforesaid;

And why a fit and proper person should not be appointed, as speedily as possible, receiver to take charge of said moneys and securities constituting said sinking fund, and to demand and receive from the said trustees all moneys and securities now in their hands, or which may come into their hands, either by payments into said

sinking fund or by sales of said lands, to hold the same under the direction and subject to the future order of this honorable court.

JACKSON, LAWTON & BASINGER,
Sol's for Pl'ff.

408 In the Circuit Court of the United States for the Northern District of Florida.

On reading and filing the foregoing petition, it is ordered that Harrison Reed and others, the trustees of the internal improvement fund of Florida named in said petition, and their successors, show cause before me at the United States court-room, in Jacksonville, on the 29th day of April, A. D. 1872, at 10 o'clock, why the paper of said petitioner should not be granted, and that a copy of this petition and order should be served upon them personally, or upon their solicitors, at least three days before the said 29th day of April, appointed for said hearing.

April 22nd, 1872.

(Signed) PHILIP FRAYSER, *Judge.*

Indorsed: In the circuit court of the United States for the northern district of Florida. In equity. Francis Vose *vs.* The Trustees of the Internal Improvement Fund of Florida *et al.* Petition. Copy. Original filed 22nd April, A. D. 1872. Jackson, Lawton & Basinger, solicitors for plaintiff.

United States Circuit Court, Northern District of Florida.

FRANCIS VOSE, Plaintiff,

vs.

HARRISON REED *et al.*, Trustees of the Internal Improvement Fund of Florida, Defendants.

In the Matter of the Petition of FRANCIS VOSE for Attachment for Contempt, *et cetera.*

409 And now comes one of the above-named defendants and makes this his separate answer to the aforesaid petition, and respectfully shows to this honorable court that he was attorney general of the State of Florida and one of the trustees of the internal improvement fund of the State of Florida from the 26th day of January, A. D. 1871, to the 12th day of February, A. D. 1872, and is not now one of the trustees of the aforesaid fund; that for answer to so much of the petition of the complainant herein alleging a violation of the injunctional order hitherto made by his honor Judge Woods in the matter of selling 23,116 and .01 acres of land to the Southern Inland Navigation Company for $28,116.01, receiving in payment therefor coupons which had been previously deposited with S. B. Conover, State treasurer, — says that before signing the said conveyance he was informed by the treasurer of the fund, S. B. Con-

over, and by the salesman of the board, J. S. Adams, that the said coupons had been deposited by Mr. Gleason, the agent of the said company, with the said Conover, as treasurer of the said board, and received by him in payment for the said lands a long time prior to the issue of the said injunctional order, before he became one of the trustees, which he verily believes to be the fact, and he signed the aforesaid conveyance believing that the said trustees were bound to execute the said conveyance, since the purchase-money had been paid and received by the treasurer of the trustees, not having any intention to violate the injunctional order, the circumstances being different than in the case of the conveyance to the Florida Improvement Company, in this, that the said Conover, treasurer, re-
410 fused to receive the $10,000 in railroad coupons, whereas in the case of the conveyance to the Southern Inland Navigation Company the said treasurer did actually receive and receipt for the said coupons in payment for the said lands; that in answer to so much of the complainant's petition touching the contract between the trustees and Williams and Swann for the selection of lands under the act of Congress of September 28th, 1850, said services to be paid for in lands at $1.00 per acre, — says that he gave his assent to that contract, believing it to be advancing the interests of the fund, bringing to it a large tract of land, with the advantage of the first selection; the said Williams and Swann taking their pay in lands, he regarded it as a good contract for the trustees, and he supposed and understood that that would be their only mode of payment, and the first knowledge that he ever received that they were paid in any different manner was after he had ceased to be a trustee of the said fund; that during the time he was trustee J. S. Adams was treasurer and salesman of the board, whose duty it was to receive money in payment of lands sold, and your respondent signed conveyances, from time to time as they were brought to him, upon the supposition that nothing but cash had been received in payment, and never, to his knowledge, signed any conveyance as trustee where payment had been made in any other way, excepting the aforesaid conveyance to the Southern Inland Navigation Company.

Your respondent further says that no investment of the trust fund was made in State bonds or State scrip while he was a trustee; that he never, directly or indirectly, exchanged tax-paying for non-tax-paying scrip belonging to the trust fund; that during his
411 term as trustee he never received or exchanged a single dollar to the said fund, except moneys paid him for actual expenses incurred in the performance of his duties as trustee upon regular audited accounts, neither has any such exchange of State scrip or the substitution of State scrip for money collected from the Florida Railroad Company been made with his knowledge or consent. In answer to so much of the complainant's petition charging a contempt of a certain — made by his honor Judge Woods, at Savannah, Ga., purporting to be consented to upon the part of the trustees, your respondent says that the said decree was rendered without their knowledge and consent, and no person or attorney ever received any authority whatsoever to sign said decree on behalf of said trustee;

that on the contrary your respondent, learning indirectly before said decree was entered, that the same was to be entered without the consent of the trustees, being in the city of Tallahassee, prepared and forwarded by mail to the Hon. Philip Fraser, judge of the United States district court, then being held in the city of Jacksonville, in which court this cause was then pending, the following protest, a copy of which is herewith given, and reads as follows, to wit:

TALLAHASSEE, FLA., *December 14th*, 1871.

I wish to protest, as a member of the board of trustees of the internal improvement fund of Fla., and as their attorney and solicitor of record in the case of Francis Vose *vs.* Harrison Reed *et al.*, in the circuit court of the United States for the northern district of Florida, against any consent decree being entered in that case without
412 the authority of said board and myself, as their solicitor of record.

JAMES B. C. DREW,
Attorney General, Florida.

To Hon. Phillipi Fraser, judge U. S. dist. court, Jacksonville, Fla.

Under this state of facts the trustees refused to carry into effect the said decree, and on the contrary directed their solicitor to cause the same to be set aside, and a motion to that effect was made by your respondent in this court, pending the consideration of which your respondent ceased to be a trustee and solicitor for said trustees; and your respondent, for answer to that portion of the complainant's petition alleging the "exchange of tax-paying scrip at par for coupons to the amount of $15,000," denies having any knowledge of such transaction until reading the complainant's petition, and if any such exchange was made it was made without this knowledge or consent. Immediately after reading the petition he examined the record of meetings of the trustees and found a resolution authorizing the treasurer, Mr. Adams, to make the aforesaid exchange of scrip for coupons to the amount of $15,000. This resolution was recorded among the other doings of said trustees, at a meeting held in the city of Jacksonville in the month of ——, A. D. 1871, at which meeting your respondent distinctly recollects all the transactions of the said trustees at the said meeting. He denies any knowledge of any such resolution being either offered or acted upon while he was present at said meeting, and the only way that he can ac-
413 count for a record of such resolution is that it is possible that the same may have been adopted while he was absent from the room, as he was not present all the time during the said meeting, or an error in the record of the proceedings itself.

Your respondent further says that while a trustee he endeavored at all times to act in strict conformity to the said injunctional order, and prays that he may be discharged from all further proceedings in the matter of the petition for attachment for contempt, etc.

Dated April 27th, 1872.

JAMES B. C. DREW.

STATE OF FLORIDA:

James B. C. Drew, being duly sworn, says that the matters and *thought* set forth in the foregoing answer are true in substance and fact, except as to matters therein stated upon information and belief, and as to these matters he believes it to be true.

J. B. C. DREW.

Subscribed and sworn to before me this 27th day of April, 1872.

J. E. TOWNSEND, *Clerk.*

Indorsed: United States circuit court. Francis Vose ag't Harrison Reed *et al.* Application for attachment for contempt. Filed April 29th, 1872. J. E. Townsend, cl'k. Answer of J. B. C. Drew.

Answer of J. S. Adams to the Application of Complain-t for Attachment. Filed April 29th, 1872. J. E. Townsend, Cl'k.

414 In the United States Circuit Court, 5th Judicial Circuit, Northern District of Florida.

FRANCIS VOSE

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND *et al.*

This defendant, answering, says, in response to the general tenor of the allegations, *wrest*fulness and recklessness, against the defendants in the petition of the complainant, that the great body of the claims against the internal improvement fund, of which the defendant and his colleagues are officially the legal custodians, consists of bonds of the different railroads which are beneficiaries of the act constituting the fund and creating the trustees, for the ultimate redemption of which bonds the trustees are bound to establish and maintain a sinking fund, and the coupons of which bonds are guaranteed payment in land or the proceeds of the sales thereof.

That the action of the trustees in the management of the funds within the last few years has been such as very largely to increase the value of the coupons and bonds of said roads & of the security for their payment derived from the fund.

In the year 1866, for non-payment of its tax for the sinking fund, the Florida railroad was seized and sold by the trustees agreeably to the provisions of the internal improvement act of 1855, and the same course was subsequently taken with the Florida, Atlantic & Gulf Central R. road in 1868, and with the Pensacola & Geor-
415 gia and the Tallahassee R. road in 1869.

The Florida R. Road was sold in 1866 for an amount equal to 20 per cent. of the total amount of its bonds issued and guaranteed by the fund, and the whole of said amounts was deposited with Moses Taylor, of New York, a prominent banker there, for the purpose of taking up the outstanding bonds of that road at that rate.

Nearly all the bondholders of that road gladly availed themselves of the opportunity, &, accepting the 20 per cent., surrendered their bonds. The complainant in this case at that time refused to accept the conditions of proffered judgment, and brought suit in New York against the trustees, alleging gross *wrest*fulness and carelessness & fraud on the part of the trustees and asking the appointment of a receiver, and said suit, precisely similar in its character in its allegations & scope, is still pending and undecided in the courts of New York, having been litigated in the defence of the fund at great expense.

The Florida, Atlantic and Gulf Central Railroad was for similar cause sold in 1868, and also brought 20 cents on the dollar of its liabilities, & with this amount so received from the sale of the road all of its bonds, except $36,000 of bonds, have been paid up and surrendered.

In 1869 the Pensacola and Georgia & the Tallahassee R. roads, for default in payment of their sinking-fund tax, were taken possession of & sold by the trustees for enough to take up all the bonds of the P. & G. R. R. and about 94 per cent. of the bonds of the Tallahassee R. road. Of the amount for which these roads were
416 sold bonds to the amount of $960,000, with their coupons attached, to a great amount, have been paid in, and the bonds and coupons thus received and cancelled exceed $2,000,000 in amount, while there still exists a balance of the purchase-money of said roads unpaid of some $462,000, with interest, for which suit has been brought and for the payment of which the J. P. & M. R. road has been, by order of the State court, seized and placed in the hands of a receiver.

From all which, as this defendant alleges, it will be apparent that, with the exception of the claimant in this case, who refused to accept terms readily acquiesced in by other creditors, the claims of all other creditors have been almost *actively* satisfied or satisfactory arrangement for their payment has been made, so that the fund in its entirety, consisting of several millions of acres of land, gives ample security for the ultimate redemption of the bonds held by Mr. Vose and for the payment of his coupons, and therefore that the allegations in said complainant's petition made, that the security of complainant's claim is endangered by the careless mismanagement & fraud of the trustees, is not well founded.

And this defendant further says that the trustees have always recognized the claim of Mr. Vose, and that said trustees, while having neither the ability nor the inclination to make his a preferred claim or to extend special terms to him in contradistinction to other creditors, have still urged upon Mr. Vose the acceptance of terms offered to other creditors, and have from time to time made repeated efforts to settle his claim with such means as were within their control.

417 That in 1868 Mr. Vose desired that the trustees would make the coupons held by him receivable for lands and then make his coupons more marketable, and that, in fact, about that time, before this defendant was made a member of the board of

trustees, said complainant made and executed with this defendant a contract in writing, by which, in case his coupons could be made receivable for lands, he agreed to intrust his coupons to this defendant and his — then pending for sale upon terms then agreed upon and in said contract specified.

That in January, 1870, complainant, by his attorney, A. S. Walker, appeared before the trustees and urged the payment of Mr. Vose's claim, whereupon the trustees then agreed to receive the coupons of Mr. Vose for land under certain conditions; but the conditions were not accepted by the complainant and the negotiation failed.

But in June, 1870, in consideration of the large amount of claims against the fund which have been satisfied, and the thus assured sufficiency of the fund to satisfy all legitimate claims against it and, incited, also began earnest disposition to settle and pay the claim of the complainant, the trustees, with sufficient guards against imposition, did make the coupons of R. R. bonds guaranteed by the fund receivable for lands, but, as will appear from the petition of the complainant, this action of the trustees, though taken in accordance with the wishes of complainant, is yet made the basis of a virulent denunciation of the trustees.

And this defendant further says that, influenced by a sincere desire to settle the demand of the complainant and to save
418 the useless expense to the fund caused by an unnecessary litigation of a claim which they did not dispute, the trustees have instituted conference after conference and repeated negotiations with the complainant and his attorneys until such repeated negotiations terminated in the final decree by consent, signed by Judge Woods, in December, 1871.

And that since the failure of compliance with said decree, in consequence of the default of other parties, and on the 8th March, 1872, the trustees, by resolutions of that date, proffered to Mr. Vose in settlement of his claim, to invest in complainant's bonds the sinking fund on hand to the amount of $50,000 and the *pro rata* share of the sinking fund of the Florida R. road pertaining to complainant's bonds, as said fund may accrue, and to give him 600,000 acres of land in land *stouts* or certificates for complainant's coupons, thus making a most liberal offer, which complainant declined.

And this defendant further states in reference to the alleged insecurity of the claim of the complainant—

That since the accession of the present trustees the market price of bonds, coupons, and other claims against the fund has steadily increased.

At the time of the sale of the Florida R. road, in 1866, at 20 per cent. of its liabilities, the coupons of that road were easily purchased in the market at ten cents on the dollar, but that after the sales of the various roads hereinbefore referred to and the liquidation
419 of claims against the fund thereby caused the value and market price of bonds and coupons of said roads has steadily advanced, and the effect of the policy of the trustees in the management of the fund has been such that, notwithstanding the allegations in the petition of the complainant impugning the good faith

and business sagacity of the trustees, the fact stands out in the knowledge of all men cognizant of R. road affairs in Florida that the bonds and coupons of the various roads referred to, including those of Mr. Vose, the complainant, from the calling in and payment of more than 60 per cent. of all legitimate claims against the fund, resulting from the management of the trustees, have so largely increased in value that the coupons of Mr. Vose, which in 1865 and 1866 could not have been sold in market at ten cents on the dollar, are now held at from 40 to 60 cents on the dollar, and this in spite of the immense expense caused by the pendency of suits against the trustees in Mr. Vose's name, both in New York and in Florida, for the same cause of action and at the same time.

And this defendant, in regard to the specific allegation in said complainant's petition for an attachment, last filed in this honorable court, further answering, says—

That in obedience to the decretal order of this hon. court, made in May, 1871, and renewed in December, 1871, directing a reconveyance to the trustees of the lands theretofore conveyed to the Florida Improvement Company and to E. A. Studwell, the direction of this hon. court has been fully obeyed and the deeds of reconveyance from said Florida Improvement Company and same Studwell has been fully executed and filed in this court, pursuant to its order,
420 and that all of said lands have, by resolution of the trustees, been restored to market, and that, so far as this defendant knows, no design has existed on the part of any of the trustees to make any other disposition of said lands than in strict accordance with the order of the court herein and with the consent of the complainant.

And in reference to the second allegation in said last petition of sales of land to W. H. Gleason, in violation of the injunction, this defendant states that long previous to the issue of injunction in this case, viz., in April, 1870, in accordance with a contract theretofore made with the Southern Inland Navigation and Improvement Company, a concession was made of lands to said company on their payment of stipulated price, and on their filing of a bond in said concession prescribed and its approval by the trustees deeds were ordered to issue.

That payment for said lands had already at that time been deposited with the treasurer of the board, and that the form of the required bond was filed with and approved by the board in the month of September, 1870, and thus the whole contract consummated some three months prior to the issuing of the injunction, and that no deeds other than in furtherance of such completed contract have, to the knowledge of this defendant, issued.

And in regard to the sale of lands for coupons no such sale has occurred except where the proceeds of sale, in strict accordance with the injunction, have been invested in coupons of equal or prior date to those of the complainant; and, in response to the third allegation of a "pretended contract" with Messrs. Swann and Williams,
421 this defendant states that a contract for the selection of swamp and overflowed lands agreeable to the laws of the United States was presented to the trustees for their consideration by Messrs.

Swann & Williams, of Fernandina, men of known character for competence and integrity, on the 4th February, 1871; that said contract was by the trustees approved and referred to the Governor to complete, as by law and custom, the app't of agents for selection devolved upon the Governor. This contract was fully considered—unanimously approved by the trustees; also approved by the Governor and returned to the trustees to be recorded on the 4th March, 1871, and was then recorded and published in a report of the trustees in January, 1872.

By said contract for every acre selected Messrs. Swann & Williams, on return of the plot and lists, were to receive two cents, payable in land at one dollar per acre, and as in the case of competent and upright agents approval of selection follows selection, as a matter of course, the selection of such men was deemed equivalent to an addition to the fund of so much land as might be selected, which at the established price would be held at $1.25 per acre, and the so-called "pretended contract" was deemed a reasonable and desirable one.

And this defendant further states that, so far as his knowledge extends, neither this defendant nor any other of the trustees has or ever had *any* the slightest interest whatever in said contract.

In reference to the 4th allegation of the complainant this defendant states that it is true that the treasurer of the fund was, during the year 1871, as had often been done before, authorized to ex-
422 change State scrip for R. coupons of similar character to those of the complainant, and did do so to the amount of $15,000, thus and to that extent diminishing the indebtedness of the fund and to the same extent relieving the trustees from the burden of the allegation of having accepted State scrip instead of R. R. coupons in payment of lands.

And in reference to this allegation this defendant further states that in 1871 non-tax-paying State scrip was selling at from 30 to 33 cents on the dollar, while the policy of the trustees had advanced *from* the market price of coupons from about ten cents, in 1866 & '7, to from 30 to 40 cents, and that thus the exchange *for* scrip for coupons was in fact an exchange of equivalents.

In reference to the fifth allegation of complainant, that the sinking fund might have been invested more profitably, the defendant states that the trustees have made repeated efforts to recall the balance in Taylor's hands in New York, which this complainant refused to accept in payment of his bonds upon terms readily accepted by other bondholders, and which, then received, at compound interest would have insured the payment of his bonds at their maturity, but have been foiled in every effort to recall said balance and in order to invest the same according to law, and this mainly by the interposition of the lawsuit brought by complainant in New York.

That the heavy payments to counsel have been incurred in defending the sinking fund, which by law is appropriated to the payment, specifically, of the principal of the bonds of said road against the demand of complainant that the same should be expended

423 in the payment of coupons for interest, as the trustees have supposed, in violation of the law and against right.

And of any substitution by *individend* trustee of money received from Florida R. R. for scrip this defendant has no knowledge, and believes that any investments of the assets of the fund in U. S. or State bonds or liabilities or in R. R. bonds guaranteed by the fund, *or* if any such has been made, is precisely permitted by the internal improvement act.

In regard to the non-obedience to the decree of December, 1871, of his honor Judge Woods, this defendant states that he was personally informed, on application to the clerk of this honorable court, that the decree by order of court had been prohibited from entry on the docket as being informal—of no effect.

As to the seventh allegation of the said complainant this defendant states that the system of keeping the land books in the State land office is such that a complete history of any transaction in the sale of land is completed, describing the tract sold in full, giving the quantity, the kind, the description, the appraised value, and the nature of the payment, and then, at a glance, the complete transactions of the office are displayed.

That while it is true that the regular treasurer's book of the treasurer of the board preceding the present has never come into the hands of the present trustees and thus there is no regular treasurer's book belonging to the board as such, yet such treasurer is required to make and does make a complete record of all expenditures of the funds of the trustees coming into his hands, which is periodically examined and approved or disapproved and corrected.

That this defendant, while treasurer, has kept and re-
424 turned his accounts and retained the same when settled and approved as voucher, and that as far as he knows his predecessor took the same course. Of late the treasurer of the trustees has been required to give satisfactory bond in $20,000. In regard to the 8th allegation of the complainant, that the trustees are about to give a favorable hearing to a proposition from the Florida Improvement Company to receive 250,000 acres of land for $125,000, this defendant will not undertake to answer as to the probable future action of the trustees any further than to say that if the allegation be well founded it would only show a disposition on the part of the trustees to offer to another claimant precisely the same terms which have been repeatedly tendered to the complainant.

And this defendant further says that he personally and his codefendants, the trustees, he believes, have not intended, wished, or desired nor have he or they violated any decretal order of this honorable court or any mandate or injunction thereof; but, upon the contrary, that this defendant and, he believes, the other trustees have used their best efforts and judgment to obey the honorable court, and now and at all times are anxious and desirous so to do; and, further, that, as before shown, this defendant and his co-trustees, he believes, have no personal interest or benefit in any of the matters set up by complainant; that they have official duties to perform, and nothing else actuates this defendant, and he believes his codefend-

ants, but an anxious desire to *exchange* faithfully the official duties connected with the trust and the laws of the State, and that the fund was then created for the sole benefit of the complainant,
425 but that the action of complainant has been vexatious and litigious and of great injury to the fund, as shown above; and this defendant shows to the court that the complainant ought not to be permitted to carry out and litigate two suits—one in this court and one in New York—about the same subject-matter and to the damage and injury to the fund by increased expense and costs, and this defendant asks the court that time may be given to the trustees to produce the record of the suit now pending in New York against the trustees, instituted by the said Francis Vose, to prove the allegation of the multiplicity of suits; and, further, this defendant shows to the court that the trustees have, as above shown, vastly increased the value of the fund and the securities in the hands of the said Vose, and that the United States have in market under the homestead law a vast area of arable lands, being millions of acres more than the fund in the trust, and that while the United States arable lands can, under the homestead act, be entered at less than ten cents per acre the trustees ought not to be expected —, nor are they chargeable with the inefficiency because they cannot, sell at high prices the swamp and overflowed lands when arable lands can be obtained as aforesaid for 10 cents per acre of the United States.

Further, defendant says that the R. R. Co's now engaged in the construction of the lines of railroad designated in the internal improvement act are the parties for whose chief benefit the fund was created, and that if the managements contained in the decree having reference to the J., P. and M. R. R. Company, or something similar thereto, was effected or shall be by order of this court
426 carried out the objects mentioned in the act, to wit, the line of R. R. east and west therein designated and the debts against the fund, can be settled and secured, but in no other way can this defendant see how it is possible for the trustees to accomplish those desired and within a period of years that could be mentioned.

That the Jacksonville, Pensacola and Mobile Railroad Company and the Atlantic, Gulf and West India Transit Company, the first engaged — building the R. R. to the western termini and the other to the southern termini designated in the internal improvement act, are beneficiaries of the fund, and if these parties can be induced to assume and settle the debts against the fund and will guarantee the completion of the lines of rail — designated in the fund *that* the fund would be well used, provided these two objects can be obtained, because, as shown, the demand for the lands by private parties is so small as to make it beyond the power of the trustees to say when they can pay the debts against the fund by sale to private parties, but that the corporations above referred to may, *be enclosed* by reason of their ability to give second mortgages on their respective roads and first mortgages on these lands, be enabled to borrow money thereon sufficient to pay the debts of the fund to complete their

lines of road; that this defendant *upholds* these *sums*, which actuated the trustees, and the whole subject relative to the decree aforesaid to the last Legislature of Florida for their consideration, *be* required by law — the record of the State — prove; but it is evident that no value to the complainant, to the R. R. Co., or to
427 any one else can be in the title to these lands from the trustees so long as any litigation whatever may be had as to the titles.

And therefore this defendant asks this court that all such titles, if they are to be made, shall be confirmed by the court.

And defendant hereto annexes a copy of his report upon lands made to the Legislature of Florida at its last session.

Wherefore he prays that he may be herein dismissed with his costs.

J. S. ADAMS.

D. P. HOLLAND,
Counsel for J. S. Adams.

Sworn to before me this 29th day of April, A. D. 1872.
J. E. TOWNSEND, *Clerk.*

Indorsed: United States circuit court, northern district of Florida. Francis Vose, complainant, *vs.* Harrison Reed *et al.*, trustees. Answer of John S. Adams. Filed April 29, 1872. J. E. Townsend, clerk.

SIMON B. CONOVER, a witness for the complainant, being duly sworn, says:

I am treasurer of the State of Florida and, as such, a member of the internal improvement board of the State. I am acquainted with the complainant in this suit and I know most of the defendants; am one of the defendants myself. I assumed the duties of my office on August first, one thousand eight hundred and sixty-
428 eight, and thereby became a member of the board of internal improvement. A short time subsequent to that time I was elected treasurer of the board. No assets whatever came into my hands as treasurer of the board from my predecessor. From the first of August to the thirty-first day of December, one thousand eight hundred and sixty-eight, I received from the sales of the internal improvement and swamp land twelve thousand two hundred and sixty-two dollars and thirty-one cents. The expenditures during that period amounted to four hundred and thirty-nine dollars and fifty-two cents. During the year one thousand eight hundred and sixty-nine I received from the same source twenty thousand four hundred and thirty-eight dollars seventeen cents. The expenses for same period of time amounted to seventeen thousand two hundred and thirty-nine dollars & one cent. During the year one thousand eight hundred and seventy-three — was received from the same source thirty-nine thousand six hundred and ninety-six dollars and twenty-one cents

The expenses for the same period of time amounted to nine thousand six hundred and eighty-one dollars and sixty-nine cents. I ceased being the treasurer of the board some time in the latter part of December of the latter year, according to the best of my recollection. I turned over to my successor, J. S. Adams, forty-five thousand and sixteen dollars and forty-seven cents.

In the expenditures for the year one thousand eight hundred and sixty-nine for the month of February I paid coupons of the Pensacola & Georgia & Tallahassee railroads to the amount of eight thousand one hundred and fifty-eight dollars and fifty cents.

429 I also paid during the month of June to John P. Sanderson coupons of the Florida, Atlantic & Gulf Central railroad — one thousand and fifteen dollars, and also paid to Papy & Puter for attorneys' fees one thousand dollars. Most of the eight-thousand-dollar lot of coupons paid matured on the first of July, one thousand eight hundred and sixty-eight, and some of them January, one thousand eight hundred and sixty-nine. In July, of one thousand eight hundred and sixty-nine, I paid J. P. Sanderson coupons of the Florida, Atlantic & Gulf Central railroad amounting to nine hundred and eighty dollars, and also paid in November coupons mostly of the Tallahassee railroad to Mrs. Long amounting to seven hundred and seven dollars, and in same month to Papy & Puter, attorneys' fees, five hundred dollars, and Mr. Cantfield, attorney's fees, four hundred and fifty dollars.

In February, of one thousand eight hundred and seventy, I paid Mr. Cantfield, attorney's fees, four hundred and sixty-nine dollars, and in June paid Papy & Puter, attorneys' fees, three hundred and fifty dollars. In November of same year I paid Papy & Puter, attorneys' fees, three thousand dollars.

S. B. CONOVER.

Sworn to and subscribed this 13th day of November, A. D. 1871.
A. DOGGETT, *Examiner.*

Examination adjourned till to-morrow *evening*, 9 a. m.
A. DOGGETT, *Examiner.*

430 TALLAHASSEE, TUESDAY—9 a. m.

Examination of SIMON B. CONOVER resumed:

The coupons of the Florida, Atlantic & Gulf Central railroad, amounting to one thousand and fifteen dollars, paid to J. P. Sanderson, matured from March, one thousand eight hundred and sixty-four, to March, one thousand eight hundred and sixty-eight, inclusive, and those for nine hundred and eighty dollars of the same road, paid to said Sanderson, matured from March, 1861, to September, 1863, inclusive. Those paid to Mrs. Long matured from January, one thousand eight hundred and sixty-eight, to January, one thousand eight hundred and sixty-nine, inclusive. The coupons paid were in a perfect condition, in nowise erased or defaced, and were detached from the bonds. Lands purchased in eighteen hun-

dred and seventy were mainly paid for in past-due coupons. All coupons which matured in the year one thousand eight hundred and sixty and subsequent thereto were received in payment of lands. These coupons I turned over to my successor, Mr. Adams. Some time subsequent to the passage of the resolution by the internal improvement board granting lands to the Florida Improvement Company Mr. Adams deposited with me, as treasurer of the board, a package said to contain ten thousand dollars in past-due coupons, intended to be applied in payments of lands granted to said company. Mr. Adams tendered them in payment of lands granted to the company, but I declined to so receive them, and simply took them on deposit.

On July 21st, one thousand eight hundred and sixty-nine, there was paid to me by the Florida Railroad Company, on account
431 of the sinking fund, two thousand two hundred and eighty dollars, and on September nineteenth, one thousand eight hundred and seventy, there was paid by same road on account of same fund eleven hundred and forty dollars; on November twenty-ninth, one thousand eight hundred and sixty-nine, the Florida, Atlantic & Gulf Central Railroad Company paid on account of said fund three hundred and fifteen dollars; on June twenty-first, one thousand eight hundred and seventy, same road paid on account of same fund two hundred and sixty-five dollars. The eleven — and forty dollars paid on account of Florida railroad was paid by Governor Reed for period from the first of May, one thousand eight hundred and sixty-nine, to November first, one thousand eight hundred and sixty-nine; it was paid in Florida State scrip, having at that time a market value of about fifty cents on the dollar. I was informed by Mr. Roberts, agent of the road, that this amount was paid Governor Reed by draft on some Northern bank about the time when the same fell due from the road to the sinking fund. All of the other payments made on account of the sinking fund by the railroad companies were made in current funds. These funds, under a resolution of the board, have been invested in State bonds of Florida.

In March, one thousand eight hundred and seventy, there was loaned to the State penitentiary of the internal improvement funds three thousand dollars. There was paid to me, as treasurer of the board, for salary for the year one thousand eight hundred and seventy six hundred dollars, and paid to Mr. Webster, as clerk of the surveyor general, one thousand dollars. The ten thousand
432 dollars of coupons deposited by Mr. Adams was returned to him by me about the time of my ceasing to be treasurer of the board, some time in the year of one thousand eight hundred and seventy. Mr. Gleason, as agent of the Southern Inland Navigation and Improvement Company, deposited with me a package of coupons to be applied in payment of lands granted to the company from time to time, as the same should be selected. The amount in the package I do not know, as I never counted them. As near as I can remember, about ten thousand dollars of the package were applied in payment of lands selected. The balance of the package was turned

over to Mr. Adams. To the best of my recollection, I do not remember to have received any coupons in payment of lands older than those of one thousand eight hundred and sixty-one. I kept no record of coupons received showing by which of the various roads they had been issued. Scrip received in payment of lands was all tax-paying scrip; consequently there was but very little tax-paying scrip turned over by me to my successor, Mr. Adams. At the present time the difference in value between the two kinds of scrip is about fifty per cent., but at that time the tax-paying scrip was worth about fifty cents on the dollar and non-tax-paying about thirty-five cents on the dollar.

I received from Mr. Corlay a bond of the State of Florida to E. M. Dickerson, amounting to twenty-one thousand dollars, and eight thousand and five hundred dollars of bonds of the Tallahassee Railroad Company, with coupons attached, amounting from four thousand four hundred and ninety-eight dollars, or thereabouts, which I
433 turned over to Mr. Adams and took his receipt thereof.

S. B. CONOVER.

The testimony of S. B. Conover was this day read over to him and by him sworn to as being correct.

Tallahassee, February 29, 1872.

A. DOGGETT,
Master in Chancery Pro Hac Vice.

In the U. S. Circuit Court for the Northern District of Florida.

FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et al.*, Trustees of Internal Imp. Fund of Florida, *et als.*

The answer of J. S. Adams, commissioner of lands and immigration and *ex officio* trustee of the internal improvement fund of said State of Florida, to the rule heretofore issued in the above case upon the petition of the complainant. Filed April 22nd, 1872.

Respondent, answering, says that he has never intentionally violated any of the orders of the immigration or any other of the orders of the court in the case; that he has never attempted to evade the same, but has faithfully and honestly endeavored and intended to yield a full obedience to — compliance with all the orders of court in said cause to the best of his knowledge, ability, and judgment.
434 Respondent also denies that the charges in said petition generally set forth as to the management of the said internal improvement fund and the application of the monies and property to it belonging are true, or that he has been guilty of any intentional fraud or misconduct or made any improper application to the use of himself or of any other party or made any improper disposition of

said property for the benefit of any other person, as in said complainant's said petition is charged.

Respondent, further answering, says in reference to the specific allegations of misconduct in the complainant's said petition alleged, that the transaction with the Southern Inland Navigation Company or W. H. Gleason, alleged to have occurred in the month of June, and subsequent to the hearing in this case before his honor Judge Bradley, did not occur at that time, but that the conveyance referred to was executed and delivered in February of that year—several months prior to the hearing before Judge Bradley—and was made pursuant to a contract executed long before, under which the parties interested were entitled to have had such conveyances executed and delivered long before their actual execution and delivery; that the $28,116.01 in the annual report of this respondent, reported as received from W. H. Gleason and alluded to in the petition of complainant, had for many months previous to June, 1871, been on deposit with S. B. Conover, the treasurer, who preceded this respondent in said office, and were reported as received in June, 1871, because the lands for the payment of which the said $28,116.01 had been deposited, although by a previous contract due to said W. H. Gleason whenever he should designate the same and tender judgment therefor,
435 according to the terms of said contract, were not in fact designated by W. H. Gleason till the said month of June, 1871, many months after the price of said lands had been deposited with the said Conover, as aforesaid, and therefore this respondent reported the amount as received at the time when the lands were designated and deeds executed.

With regards to the allegation in the petition of complainant in regard to the conveyance of 100,000 acres of land to Florida Improvement Company, this respondent denies that any violation of the injunction arose therefrom, and states that said conveyance to said Florida Improvement Company was executed and the price of the lands so conveyed was received in the month of October, prior to the December in which said injunction issued, and in regard to this this respondent begs leave to refer to a letter respecting said conveyance from Judge Bradley, a copy of which is herewith filed.

And this respondent, further answering, denies absolutely any intentional misconduct in the conveyances of land made to Swain & Williams, and in regard to the contract made with Swain & Williams for the selection of swamp and overflowed lands this respondent adopts the answer of his co-respondent, S. B. Conover relating thereto as his own, and refers thereto as containing a true and correct account thereof; and, in further reference to the transactions with said Williams & Swain, this respondent states that he has not any, the least, personal or pecuniary interest in said contract, nor has any other of the trustees, as he believes; and this respondent further states that said Swain and this respondent are co-
436 agents for the sale of lands belonging to the Florida railroad and to some of the bondholders of that road, and that there is no other partnership of any kind existing between them.

This respondent denies that said Swain & Williams have acted as

his agents in the sale of State lands, and states that said Swain & Williams, under and by virtue of their contract with the trustees for the selection of lands, have, at all times since they began to select and report, had a credit at the State land office of a large amount due them under said contract, and that their receipts for their compensation for services under said contract have been received in payment for land, and the receipts thus taken charged against the compensation due them, and that thus the lands sold by Swain & Williams were lands owing to them by virtue of their contract, and so belonged to them, and immediately upon their order ceased to belong to the fund.

This respondent, further answering, says that it is true that during the year 1871 an exchange of $15,000 in scrip for an equal amount of coupons was made, but that this was done in accordance with a resolution of the trustees adopted on the 12th day of March, A. D. 1870; that such exchange of one class of State securities for another has from time to time and frequently occurred from the time of the establishment of the fund, and that in such exchange this respondent and his co-trustees acted according to their best judgment and in use of their best discretion, knowing that more than three-fourths of all the claims against the fund had been paid and satisfied in less than half the time allowed therefor, and con-
considering the State to be the residuary owner of the fund,
437 this respondent has consented to the occasional exchange of tax-paying for non-tax-paying scrip for the relief of the State penitentiary, to provide food and clothing for the prisoners, for the promotion of education, and for the payment of interest on the bonds of the State and to assist in the payment of necessary expenses of the State; but in such exchange neither this respondent nor, as he believes, his co-respondents have wilfully mismanaged the fund or misconducted themselves, but have endeavored to perform their duties to the State and the fund to the best of their ability and according to their best judgment. Copies of various resolutions of the trustees concerning such exchanges are annexed.

This respondent, further answering, denies that any receipt of coupons for land has been secret or fraudulent, as alleged in said complainant's petition, but that all such receipts have been made public in the annual reports made to the Legislature, as will appear from a copy of such report hereto appended, from which published report were drawn the facts upon which many of the charges of fraud were based.

This respondent, further answering, says, in reply to the allegation in complainant's petition that the funds in the hands of the trustees have by mismanagement been *rendered* to a value not exceeding $35,500, that said allegation is not true, and, for corroboration, would refer to the consent decree obtained in this case at the instance and with the consent of complainant, in which the par value of the funds in the hands of the trustees is fixed at $50,000.

And this respondent, further answering to the allegation of the complainant's petition, of looseness of keeping the accounts of
438 sales of land and of the receipts of the treasurer and his ex-

penditures, that the same were fully answered in the answer of this respondent filed herein April 29, 1872, to which he begs leave to refer.

And this respondent, further answering to the charge of refusing obedience to the consent decree of December 16th, 1871, obtained in this cause, states that he did, for himself and, as he then supposed, authorized by the majority of — trustees, give his consent to said decree and did sign the same, and in so doing acted according to his best discretion and published the reasons by which he was actuated in his annual report to the Legislature, to which, *he* appended, he begs leave to refer, and this respondent was ready to carry out said decree on his part according to the directions in said decree contained; but this respondent avers that the direction of said decree as to the investment of the sinking fund is not correctly stated in said petition of said complainant, where he alleges that the trustees were ordered to pay over the sinking fund "within 30 days from its date." This respondent states that such direction was that "within 30 days and upon the payment by the J., P. and M. R. road of $100,000" said sinking fund should be invested as ordered, and this respondent considered the decree as one entirely to be carried out as one whole, and as their treasurer did refuse to take any action in paying over the sinking fund until the accompanying condition of the payment of the $100,000, specified as a condition thereof, should be fulfilled.

And this respondent, further answering, says that he took no further action under said decree because, as is stated in his
439 answer filed herein April 29th, 1872, he was informed, on application to the clerk of this honorable court, that said consent decree had been forbidden to be entered on the docket, as being irregular, informal, and of no effect.

And this respondent, further answering, says in reference to the allegation of having received coupons for land since the issue of the injunction that no coupons have been received except those maturing prior to March 1st, 1861, which in complainant's petition is declared to be the date of the first of complainant's coupons; that of such from various purchasers he has received during the eighteen months previous to June, 1872, when the receiver took charge of the fund intrusted to the respondents, about $5,000 for lands in coupons prior to those of Mr. Vose, but that in so doing he supposed he was acting in strict accordance with the direction of the injunction.

And this respondent, further answering, says that he has never in any of his official acts wilfully or willingly disobeyed any of the orders of the court in said case, but has at all times, to the best of his abilities and by the use of his best discretion, endeavored to discharge his duties to the fund and the State in full obedience to the orders of this court — in full respect for its authority, and this respondent hereby fully submits himself to the orders of court, and desires to make any other or further answer in the case that may be directed by the court, and he prays that he may be discharged from the contempt of which he has — adjudged guilty.

J. S. ADAMS.

440 Sworn to before me this 17th day of December, 1872.
J. E. TOWNSEND, *Clerk.*

Indorsed: Francis Vose *vs.* Harrison Reed *et al.* Answer of John S. Adams. Filed December 17th, 1872. J. E. Townsend, cl'k. Exhibits accompanying the answer of J. S. Adams are below.

441 In the United States Circuit Court, Northern District of Fla.

FRANCIS VOSE
vs.
HARRISON REED *et al.*, Trustees of the Internal Improvement Fund.

Robert H. Gamble, comptroller of the State of Florida and *ex officio* one of the trustees of the internal improvement fund of the State of Florida, leave of this court having been first obtained therefor, respectfully shows to the said court that Attorney-General Emmons, a solicitor of this court, was the counsel representing this defendant as well as the other trustees, and that he instructed said solicitor to make for him a separate answer as in his, defendant's, opinion his defense could not be made out in a joint answer, as he based his defense and expected to show his justification for the most part by his opposition to the acts complained of his co-trustees.

The said solicitor agreed with him in opinion, and promised that such an answer should be filed, and that he, the said Emmons, would prepare and file the same; and he, the said Emmons, then and there took notes from which to prepare such answer, and further assured this defendant that his presence before the court would not be necessary, and this defendant, not being familiar with legal proceedings, believed that nothing more was necessary for him to do

442 in the premises, and that his answer would be presented to the court in due time, as required by the rule; that neither Harrison Reed nor J. S. Adams had any authority to answer for this defendant nor to join him with themselves in their answer, and that the same was done without the authority or consent of this defendant, and until last night, when the matter was brought to his attention by the solicitor for the complainant, Gen. Jackson, was he aware that any such joint answer was in existence; that as soon as this defendant was informed of the issuing of the attachment he started to repair to Jacksonville, but was informed that the court had adjourned, and that Judge Fraser had left Jacksonville.

And now, by further leave of the court in this behalf obtained, in response to the rule hereinbefore issued in said cause requiring him to show cause why he should not be attached for contempt of the order of injunction heretofore made herein, he answers and says that he was not a party, nor did he in anywise consent to the conveyance of lands made by his co-trustees to the Florida Improvement Company, but, on the contrary, when solicited to sign said conveyance he absolutely refused to do so, and the same was made and delivered without the signature, participation, or consent of this

defendant. This defendant is informed and believes that said lands have in pursuance of the order of his honor Judge Bradley been reconveyed to the said Florida Improvement Company, though the reconveyance thereof has not come under personal notice or observation of this defendant.

443 This defendant does not deny that money has been recovered from the Florida Railroad Company on the sinking fund. The exact amount this defendant does not state. But this defendant denies that said fund or any part thereof have ever been in any manner by him, to his personal use or benefit or with his consent, perverted from their legitimate use and purpose under the trust of which he is one of the custodians, except that he did consent to and urge the application of a portion of said fund, some $4,500 in all, to the relief of insane citizens of Fla. who were being cared for in the asylum for the insane at Columbus, S. Ca., and for feeding the prisoners confined in the penitentiary at Chattahoochee. That the prisoners were represented to be without food; the State authorities threatened to turn the Florida patients from the hospital if not paid at once. Respondent concedes that this was a diversion of the fund. but says that his course in the matter was dictated by feelings of humanity, and the State is bound to repay to the board the advances thus made. The defendant further says that he knows of no trust fund taken by any member of the board and substituted with scrip except $1,140 paid for Reed by M. C. Roberts for the Florida R. R. Co., which said road appropriated and afterwards paid into the treasury of the trust fund in scrip.

On the margin: He also consented to the payment of three thousand dollars to Papy & Peeler.

444 Defendant further says that the conveyance of lands to the Southern Inland Navigation Company was also made without his consent, and when applied to and solicited to sign the same this defendant positively — so to do.

Defendant further says that as to the sale of any other lands since the issuing of said injunction for coupons, as charged to have been made, he knows nothing of the same; that if any sales of land were made as charged for coupons it was without his knowledge or consent; that this defendant inquired of the treasurer of the board in regard to the character of the funds received by him in payment for lands, and was assured by the treasurer that payment was made in money, and it was only upon such representations from the treasurer that this defendant consented to sign conveyances of trust lands; that this defendant could not personally examine such payment of funds made to the treasurer of the board, but has taken every reasonable precaution in his power to prevent the alienation of the trust lands for other consideration than money since the date of said injunction.

This defendant further says that the Governor of the State of Florida, Harrison Reed, some time in the summer or fall of 1871, the precise date defendant is not able to give, contracted with Messrs.

M. A. Williams and S. Swann, of Fernandina, to locate the unsettled swamp lands in the State for a compensation of one acre to every fifty so located, to be paid them in what is known as floats;
445 that this contract was made by the Governor under the power and authority vested in him by the first section of an act to secure the swamp and overflowed lands lately granted to the State, and for other purposes, approved January 23rd, 1851.

That by the second section of said act it is provided that the expenses of examining and locating said lands shall be paid out of any monies received out of the sale of lands. When informed of the contract made by the Governor as aforesaid, this defendant, feeling that it was manifestly to the interest of the trust fund that all the lands granted to the State should be selected, classified, and put upon the market, considering the matter as under the law within the prerogative of the executive, made no objection to the character or amount of compensation, but afterwards, when applied to by the complainant to intervene in the matter on the ground that the compensation given to said Williams & Swann was excessive and should be paid from the lands by them located and not from the trust funds at large, this defendant did bring the matter to the attention of the board and protested against the further execution by said Williams & Swann, by their contract, unless they should consent to take their compensation out of the lands actually located; that this defendant has no knowledge of any sales of land made by said Williams & Swann except of the lands paid them under their said contract, and if any such sales were by them — or charged they were made without his knowledge, connivance, or consent.

That this defendant knows nothing of any coalition or partnership, as alleged, between said Williams & Swann and the
446 treasurer and salesman of the board, but this defendant has been informed by the treasurer, J. S. Adams, that no such connection has ever existed between them.

Defendant further says that if the treasurer of the board, at any time during the year 1871 or subsequent thereto, exchanged non-tax-paying scrip for coupons to the amount of fifteen thousand dollars or to any other amount it was done without the knowledge or consent of the defendant; that no authority was given to said treasurer by the board, at any meeting of the said board at which this defendant was present, to exchange non-tax-paying scrip for coupons, but this defendant is informed that such authority was granted by the board at a meeting held in Jacksonville, at which this defendant was not present.

This defendant further says that he has never seen the letter of Feb. 24, 1871, addressed by the complainant Vose to the treasurer, J. S. Adams, that he is aware of, nor was the same ever submitted by the said Adams at a meeting of the board, as he recollects.

This defendant further says that the sum of $55,000 referred to by complainant has not at any time been under the control of the present board of trustees; that said fund was deposited by the former board with Moses Taylor, of New York, and said Taylor has presistently refused to permit the present board of trustees to have any

control or direction of the sane, and the said Taylor has refused to give to this defendant, as a member of the board, any information as to the amount or condition of the said fund.

447 This defendant further says that he protested against the attorney general of the State being retained to defend the board, and any and all moneys paid him for professional service in this behalf were paid under protest of this defendant; that this defendant did employ Cabell to represent the board at one time in N. Y., for which service the said Cabell was paid the sum of $100. This defendant, answering, — that the articles of agreement between his co-trustees and the J., P. & M. R. R. Co. were entered into with his knowledge or consent, but avers that he was at the time out of the State and on his return protested against the same.

And this defendant further says that he was not a party to the consent decree referred to, but that as soon as he heard of the same he insisted that the same be set aside, and has used every means in his power to accomplish that object, and this defendant protests against being in anywise bound by the consent on which said decree was made.

And this defendant further says that he does not deny that the business of said board of trustees had been conducted in the loosest manner, as charged, but says that he has used all possible diligence, as one member of the board, to prevent frauds and abuse of the funds; to have the business of the board conducted and the books kept in proper *and* regard and manner and form, and to discharge the high fiduciary powers reposed in him by his official position; that he has always protested against the combination of the offices of salesman and treasurer in the hands of one man as subversive of all checks and safeguards.

448 And many meetings of the board have been held at Jacksonville with and without notice to this defendant, but this defendant has used all diligence to post himself with regard to all action of the board and protest against any acts done in his absence, which, in his opinion, were — violation of the trust.

And this defendant, having fully answered, asks to be discharged from the order attaching him for contempt.

FLEMING & DANIELS,
Sol. for R. H. Gamble.

STATE OF FLORIDA, *Duval County:*

Before me, J. E. Townsend, clerk of the above court, personally appeared Robert H. Gamble, one of the defendants in the above-stated cause, who, being duly sworn, says he is acquainted with the contents of the foregoing answer, and that the allegations therein set forth and the matters and things therein contained are true in substance and in fact.

R. H. GAMBLE.

Sworn and subscribed before me this 18th Dec., 1872.

J. E. TOWNSEND, *Clerk.*

Indorsed: Francis Vose *vs.* Harrison Reed *et al.*, trustees, *et al.* Answer of R. H. Gamble. Filed Dec. 18, 1872. J. E. Townsend, clerk.

449 FRANCIS VOSE

vs.

HARRISON REED *et al.*, Trustees of the Internal Improvement Fund.

The replication of Francis Vose, complainant, to the joint answer of O. B. Hart, C. A. Cowgill, C. H. Foster, W. A. Cocke, and Dennis Eagan, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JACKSON, LAWTON & BASSINGER,
Complainant's Solicitors.

Indorsed: In the 5th circuit of the U. S. for the northern district of Florida. Francis Vose *vs.* Harrison Reed *et al.*, trustees of
450 the internal improvement fund. Replication. Filed July 1st, 1873. J. E. Townsend, clerk. Jackson, Lawton & Bassinger, complainant's solicitors.

In the Circuit Court of the United States for the Northern District of Florida.

FRANCIS VOSE

vs.

OSSIAN B. HART, Governor, and Others, Trustees of the Internal Improvement Fund of Florida.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his supplemental bill to be true, certain, and sufficient in law to be answered unto; that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters

and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in his supplemental bill he hath already prayed.

H. R. JACKSON,
Sol. for Complainant.

J. J. FINLEY,
Of Counsel for Complainant.

451 In the U. S. Circuit Court for Northern District of Florida.

FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et al.*, Trustees of Internal Improvement Fund of Fla., *et al.*

The answer of Simon B. Conover, treasurer of the State of Florida and *ex officio* trustee of the internal improvement fund of said State, to the rule heretofore issued in the above case upon the petition of complainant. Filed April 22nd, 1872.

Respondent, answering, denies that he has intentionally violated any of the orders of the injunction or any other order heretofore made in this cause, or that he has sought in any way to avoid compliance therewith, but has endeavored to give an honest and entire obedience to such mandates of the court according to the best of his knowledge or what were thereby ordered to the best of his ability and judgment. Respondent denies positively all the charges of this petition generally set forth as to the management of the
452 said internal improvement fund and the application of the moneys and property to it belonging, or that he has been guilty of any fraud or misconduct or made any improper applications to his own use or to the use of others or made any improper disposition of said property for the benefit of any other person that has been by said complainant charged.

Respondent, further answering specifically to matters charged to said petition, says that it is untrue, as alleged, that any transaction with the Southern Inland Navigation and Improvement Company or W. H. Gleason took place in the month of June, 1861, or after 18th day of May of that year, but that the deed was executed by the trustees, except R. H. Gamble, by which the contract which had been entered into between said company and the trustees prior to the filing of complainant's bill, to wit, on the 10th day of February, 1874, which deed was on said date delivered, the doing of which was not deemed by the trustees as a violation of the first order of injunction made in this case, in which opinion respondent has confirmed by the fact that nothing has been done in this cause at the instance of complainant or the court itself to have such contract set aside as was sought to be done in the matter of the Florida Improvement Co.

Respondent further says that Swann & Williams were appointed

agents of the board for the location and selection of lands to which — were entitled by acts of Congress at a rate of compensation believed to be fair and not excessive; that the mode of payment was
453 two (2) cents per acre, payable in cash or land. Payment in cash became impossible, owing to the condition; and the pay in land was, in the judgment of the trustees, most beneficial to the fund; that the trustees received the orders of Williams & Swann to the extent they became entitled, as far as they desired to draw in payment for purchases of land at the rate agreed on at which they were to take land, viz, one dollar per acre, the trustees believing that the procuring of purchasers for lands was an advantage to the fund; that in employing said agents to perform such duties the trustees followed the same line of conduct that was *perused* by the first *bond* of trustees, and which had become the settled policy of the State; that it is true that Williams and Swann have received, according to the terms of said contract, the sum of — dollars by means of land sales made as before stated. What is the amount still due them respondent is unable to state, but thinks the same will appear in the answer of the co-respondent; that it is untrue that the labor rendered by the said firm is nominal. On the contrary, the work performed by them is one requiring skill and experience as land surveyors, coupled with a knowledge of the law and practice governing the land offices of the United States, acquaintance of the topography of the State of Florida, and compelling them personally to inspect *to inspect* the lands selected, ascertain the boundaries, and make such field notes, maps, and plats as would authorize the officers of the United States Land Department to determine whether the selections made did not fall within the grant made to the State, and, on approval, to sever the same from the national do-
454 main, until which no title could vest in the State. It is true that said Williams had been previously engaged as a surveyor in the employ of the United States to make surveys of lands in Florida. If the knowledge he had acquired of the Florida lands whilst so employed — that specially commended him to the trustees as a fit person to select lands. The first board of trustees who made extensive selections acted on the same policy, and employed Messrs. Randolph and Wells, who had previously been United States surveyors.

Respondent says that he has no personal knowledge of the value of the land selected, nor does he know who it was who confessed to the complainant that they were worthless, nor can he undertake what may be their future value; that as to the swamp lands it is the duty of the board to embrace all, good or bad, which can be brought within the terms of the grant; that the contract to pay the surveyors in kind made it their interest to select the best lands, because all the United States lands in Florida are salable only to actual settlers. Respondent, however, believes that said Williams and Swann have faithfully performed their duty, which opinion he bases upon their well-known character for honesty and integrity. Respondent denies having any concern with said Williams & Swann; knows nothing about their business; that in making payment to

said Williams and Swann in land they could not reasonably demand that they should wait and be paid out of late selection of lands because of the time that is necessarily taken at the offices in Washington, D. C., before the State title is perfected to enable the trustees to make sale. The said respondent is informed and believes that said Williams and Swann are compelled to spend a large amount of money in the performance
455 of their contract. As to the exchange of non-taxpaying scrip in the year 1871 and the circumstances attending the same, your respondent says that he assented to such action as a member of the board of trustees, and he refers to the answer of his co-respondent, J. S. Adams, wherein such transaction is fully explained and therefor given. Respondent, having read such statement, agrees therein and says further that the act was one of good policy, as he believes that it was not secret, fraudulent, or designed to create or to give fraudulent, nor did he believe that such action was a violation of the said injunction, he having no intention so to do.

That as to the sums of money in the petition stated to have passed into the sinking fund, respondent, as to the larger sum, *respondent* has no other knowledge than that arrived at from the official documents of the State, from which it appears that said sum was placed by a former board of trustees in the hands of Moses E. Taylor, in New York city; that the amount was tendered to said complainant *to* said board on terms which he declined and has ever since refused; that respondent demanded payment of said money from Taylor, who refused, alleging, among other things, the existence of such a state of things in Florida as required him to hold on to it, since when complainant instituted a suit in the supreme court in the city of New York against said trustees and others of a similar character with the present proceeding in this court, which suit and attachment was issued and said fund in the hands of said Taylor put under the control of the said court in the city of New York, a transcript of the proceedings whereof is herewith filed and *and* as
456 a part of this answer. As to the sum of 8,560.10 dollars or thereabouts, in said petition charged to have been received from said Florida Railroad Company by this respondent and his co-trustees, he says he believes the amount stated is about the sum which has been received from said company since July, 1868; that, inasmuch as the trustees have been prevented by said complainant from procuring possession of the said money in New York, respondent insists that it is unfair on his part to throw the blame on the trustees for the failure to realize the speculative advantage which complainant insists would have arisen to the fund had he succeeded in inducing the trustees to buy his Florida railroad bonds at his price and instead of their market value, which investment if made would have — a clear violation of their duty and that right respecting other bondholders which complainant insists the trustees are bound to observe in making an investment. The trustees purchased three thousand dollars *in* the bonds of the State of Florida at 75 cents per dollar and -vested one thousand in other securities

of the State while the disposal of the money was in my care as treasurer of the State; as to the remainder of the amount I have no personal knowledge of the precise disposition of the money, and refer for particulars to the answer of my cor-espondent, J. S. Adams, and to the books kept by the trustees. I have no — misapplication of any portion of said sum received from the Florida Railroad Company; that in dealing with the State of Florida, the finances of which were in a crippled condition, certain exchanges of State scrip were made by the trustees with the State by which no
457 loss occurred to the fund, the security being the same, any difference in the market value of the respective scrip being temporary, the State being bound alike for all. The trustees believed they were empowered by the law to consider the State the best security, and in— -at as officers of the State it would be unwise and impolitic to depreciate the value of the State securities by refusing to invest therein, and respondent denies that in so doing he did violate the rights of the complainant or the mandates of the court; and respondent denies the allegation of illegal and fraudulent exchange of scrip or the substitution thereof for money collected by individual members of the board for their own profits. Reasonable fees have been paid to counsel in this and other suits, because, in the opinion of the board, in view of the great importance of the litigation, the opposing array of counsel in this and other suits, it is necessary to do so and within their legal power; that among other sums which complainant has forced the trustees to pay to counsel to resist pretensions which they were advised were unfounded in law is the sum of about 2,000.00 dollars, paid out of the fund in New York for defense of complainant's suit in New York; besides this an amount of about $8,000.00 has been paid out of the fund which was in Taylor's hands by order of said decree in court made in the suit so instituted by complainant. As to the manner of conducting the business of the board, respondent states that the plan adopted and acted upon was the best they were capable of establishing; that it was their object to manage the business to the best advantage; that all proper books have been kept, an examination of which by persons experienced in the kind of business transacted will enable such person easily to arrive at a full under-
458 standing and make a full report of the official acts done by himself and his co-trustees, and whether it appears in the testimony taken before the master or the public reports of the board of trustees and its officers that its business is conducted in the loose manner as complainant has alleged, respondent admits it — a matter about — a competent and impartial examination will not sustain the complainant. As to the refusal of the trustees to carry out consent decree respondent — that he never assented to the decree, and consequently refused to take any action in regard to it.

Respondent further says that he failed to answer the order made in this cause to show cause at the last term of this court under the mistaken opinion that the answer of his co-trustee, J. S. Adams, in which he fully concurred, could be a sufficient obedience to the rule and a sufficient answer to all the allegations in said petition, and

his failure to prepare an answer was not induced by any want of respect for the court or its authority; and respondent submits himself to the orders of the court, and is ready and willing to make any further or other disclosure or answer in the premises which the court may order and direct, and prays that he may be discharged from the contempt of which he has been adjudged to be guilty.

S. B. CONOVER.

Sworn to before me this 16th day of December, A. D. 1872.

J. E. TOWNSEND, *Clerk.*

Indorsed: Francis Vose *vs.* Harrison Reed *et al.* Answer of Simon B. Conover. Filed Dec. 17, 1872. J. E. Townsend, cl'k. Filed December, 1873. J. E. Townsend, clerk.

459 FRANCIS VOSE, Complainant,

vs.

HARRISON REED *et al.*, Trustees of the Internal Improvement Fund of Fla., *et al*

On this 6th day of December, A. D. 1870, at chambers, in Jacksonville, in the State of Florida and in the said northern district of Florida, this cause came on to be heard upon the motion of the complainant that a writ of injunction issue according to the prayer of the bill.

And due notice of said motion having been given to defendants, and the same having been argued by counsel of the parties and considered by the court, it is, therefore, ordered that the writ of injunction issue out of this court and under the seal thereof in manner and form following—that is to say:

THE UNITED STATES OF AMERICA, *State of Florida:*

In the Fifth Circuit Court of the United States for the Northern District of Florida.

To Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the Trustees of the Internal Improvement Fund of Florida, and to their successors, The Florida Improvement Company and its agent, Myron S. Mickles, and all others, its agents and servants in the said State of Florida:

460 Whereas it appears to me, W. B. Woods, judge of the — court of the United States for the fifth judicial circuit, that Francis Vose, a resident and citizen of the State of New York, brings his bill of complaint in the circuit court of the United States for the northern district of Florida, in which he shows that he is the owner of a large number of bonds issued by the Florida Railroad Company, with a large number of coupons upon them

which are past due, and which you, the said trustees named above, have refused to pay, in violation of an act passed by the Legislature of Florida on the 6th day of January, in the year 1855, irrevocably vesting in you 10,500,000 acres of land in trust, to make sale of the same according to the provisions of said act and from the proceeds of such sales to pay the coupons on such bonds as they should fall due; but instead thereof you, the said trustees, are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same, are selling and transferring said land in amounts, in manner, and for considerations that are wholly inconsistent with and violative of said act; that you are donating and disposing of the same for merely nominal prices, and for scrip and State warrants not recognized as the lawful currency of the United States; more especially and recently have entered into an agreement with you, the said The Florida Improvement Company, and you, the said Myron S. Mickles, as the agent of the said company, by which said agreement 1,000,000 acres of land belonging to said trust, to be selected from the entire trust domain, are transferred to the said New York and Florida Lumber, Land and Improvement Company at the nominal price of ten cents per acre, and that you, the said Mickles and others, the agents and servants of said company, are se-
461 lecting, advertising, and selling the said lands; and that thus you, the said trustees, are wasting and destroying the land and fund so vested in you by the said act of 1855, and by the foregoing and by other lawless and fraudulent acts are diverting the moneys which have come and are coming into your hands by virtue of said trust from the payment of said coupons in the order in which they fell due.

And whereas the complainant by his said bill prays that the writ of injunction be issued restraining you, the above-named parties, from the acts which are therein complained of, I do, therefore, in the name and by the authority of the United States of America, strictly enjoin and command you, the said Harrison Reed, Robert H. Gamble, Alvin R. Meek, Frank W. Webster, Simon B. Conover, and John S. Adams, the trustees of the internal improvement fund of Florida, and your successors, under the penalty of attachment for contempt and a pain of ten thousand dollars for each act violative of this injunction, that you and each and all of you, both in your individual and collective capacity, do desist from selling or donating or disposing of the land belonging to said trust otherwise than in strict accordance with the provisions of said act of 1855, fixing the prices and allowing pre-emptions of the same in obedience to all the restrictions of that act; that you desist from selling said lands for scrip or State warrants of any kind or for aught else than current money of the United States; that you desist from lending or investing, appropriating, disposing of, or using any of the moneys or property of said trust fund provided by said act of 1855, and so applying them in strict accordance with the provisions of
462 that act where said moneys properly belong to said sinking fund, or in payment of the coupons of said bonds where said moneys have proceeded or shall proceed from the sale of said lands,

and that you desist from paying said coupons in any other mode than in the order of their priority fixed by the date of their coming to maturity, paying first such as first became due and the others in the order in which they fell due.

And I do enjoin and command you further and specially that you desist and refrain from any and all action in executing and carrying out the agreement between you and the said The Florida Improvement Company, described in said agreement — "The New York and Florida Lumber, Land and Improvement Company," which trustees on the first day of March, in the year eighteen hundred and seventy, or thereabouts, and by which said agreement you, the said trustees, give and grant to the said company, their successors and assigns, authority to select and locate from the lands belonging to the internal improvement fund one million one hundred thousand acres of said land at the rate of and price of ten cents per acre," upon terms and conditions which are therein set forth.

And I do enjoin and command you, the said Florida Improvement Company, and you, the said Myron S. Mickles, and others, the agents and servants of the said New York and Florida Lumber, Land and Improvement Company, that under the penalty and pain hereinbefore set out you desist from further action under the said agreement with the said trustees, whether in selecting or locating lands embraced in said agreement or in advertising and selling the
463 same, or in disposing of or intermingling with the proceeds which have resulted from the sale of any portion of the same further than to retain them safely, subject to the future order and decree of this court.

In witness whereof I have hereunto set my official hand, at Jacksonville, in the northern district of Florida, this sixth day of December, in the year eighteen hundred and seventy.

W. B. WOODS,
U. S. Circuit Judge for the 5th Circuit and Northern District of Fla.

Upon the complainant entering into and filing bond, with two or more sufficient sureties to be approved by the clerk of said circuit court, in the penal sum of twenty-five thousand dollars, conditioned that the complainant shall pay all damages sustained by the parties enjoined or either of them by reason of said injunction in case said injunction is wrongfully obtained.

W. B. WOODS, *Judge.*

464 *Bill for Injunction and Relief.*

FRANCIS VOSE

vs.

HARRISON REED *et. al.*, Trustees Internal Improvement Fund, *et. al.*

And now comes said complainant, by his attorneys and solicitors, and it appearing that subpœna in chancery has been duly served upon

the defendants in the above-entitled action in conformity with the rules and practices of this court; and it further appearing that the time allowed by said rules and practice of this court for the defendants to file their answer, plea, or demurrer to the complainant's bill of complaint, and that no answer, plea, or demurrer has been filed by either of defendants, except D. S. Walker, and that said defendants, save the said D. S. Walker, are in default thereof, it is therefore ordered, adjudged, and decreed that all and every the material allegations, matters, and things in said bill of complaint contained and set forth be taken, held, and considered as confessed by said defendants so in default as aforesaid.

February 6th, 1871.

JACKSON, LAWSON & BASINGER,
BISBEE & ARCHIBALD,
Complainant's Sol's.

465 FRANCIS VOSE

vs.

HARRISON REED *et al.*, the Trustees of the Internal Improvement Fund, *et al.*

It is ordered that this cause be referred to Aristides Doggett, Esq., who is hereby appointed master in chancery *pro hac vice* to inquire and state to the court—

1. The entire amount of lands irrevocably vested in the
466 trustees of the internal improvement fund of Florida by the act of January 6th, 1855, at the date of said act, distinguishing the lands known as internal improvement lands from those known as swamp and overflowed lands, specifying the amount, respectively, of each and the prices at which they have been held by the trustees per acre under provisions of said act.

2. The entire amount which passed to the board of trustees composed of David S. Walker and others, the immediate predecessors of the present trustees, the amount sold by them, at what price, and for what aggregate sum; the amount which passed to Harrison Reed and others, the present or actual trustees; the amount sold by them and at what price; the amount disposed of by either and both of these boards of trustees otherwise than by sale for money—that is to say, how many acres and of what lands for State scrip, tax-paying or non-tax-paying, with the dates of such sales and the names of the persons *of* whom sold; how many acres *of* coupons of bonds, specifying the dates of such sales, the persons to whom and the prices at which they were sold, also describing the coupons given in payment by the bonds from which they were taken and by their dates, respectively.

3. To state all agreements or contracts which may have been entered into by the said trustees with any person or corporation, describing the same by their dates, considerations, and conditions; if originally executory, how far said contracts have been executed.

4. Where conveyances or contracts to convey have been entered into for the purpose and the consideration of internal im-
467 provement to state what such works of internal improvement were in design, how far the design has been carried out, — what works of improvement have been completed or promoted; more especially to state the number of acres of land originally swamp and overflowed which have been actually drained under or because of any such conveyance or contract, specifying the localities of all such drained lands, and also to state the amount of such swamp or overflowed lands which have been actually drained by the trustees themselves, specifying their localities.

5. To state the amount of bonds that were originally issued by railroad companies under and by virtue of the provisions of the act of January 6th, 1855, describing such bonds fully and explicitly, giving the dates of their signature and the dates of their actual issue and the number of coupons, if any, which were detached from them at the dates of their actual issue.

6. To state the number and aggregate amount of such of these bonds as have been actually taken up or cancelled, whether by the said trustees or the said railroad companies or by any party whatsoever, specifying with precision the dates of such taking up or cancellation and what became of the coupons attached to or what would have been attached to such bonds at the time of such taking up and cancellation.

7. To state the number and aggregate amount of such bonds and coupons as are actually outstanding, the computation of the amount due upon said bonds and coupons to be brought down to the first day of the next term of this court, or as near thereto as may be possible, in view of the times when the said coupons will hereafter fall due.

8. To state the amount of the fund actually in the hands
468 or under the control of said trustees which is known as the sinking fund and which was provided by said act of January 6th, 1855, to meet the principal of said bonds when it shall fall due; how much has been paid to said sinking fund, when and in what amounts paid in, and whether in money or any other form, and the amounts paid, respectively, in each.

9. To state what investments have been made, if any, of such sinking fund by said trustees, in what securities and choses in action, and at what rates where such securities were below par at the times of such investments.

10. To state of what such sinking fund consisted when it fell into the hands of David S. Walker and others, trustees; of what it consisted when it fell into the hands of the present or actual trustees; of what it consists or will consist at any time up to the date of filing said statement, and what is and will be its value in dollars if all

such securities be taken at par; what is or will be its value if all such securities be taken at their value in market at the date of said filing.

11. To state what has been done with such securities if any such have disappeared or been withdrawn from the said fund, and, if any such shall have been exchanged at any time for others, to state by whom, at what time, and at what rates such exchanges may have been made.

12. To take and state an account of all moneys which have already come or which will hereafter come into the hands of the said actual trustees or of their predecessors, bringing such statement down to said date of filing, from the sale of lands originally belonging to the internal improvement fund; to take and state an
469 account of all expenditures of such moneys as have been or shall hereafter be expended by the said trustees down to the date of said filing.

13. And for the better discovery of the matters aforesaid and for the better taking of the said accounts the parties are to produce before the said master, on oath, all deeds or books, papers, and writings in their custody relating thereto and are to be examined, etc., as the said master shall direct, and the said master shall have free access to and, for this purpose, *and* control of the record papers in this cause, and shall have full power to summon any person before him as witness, issuing in his discretion the *subpœna duces tecum*, and shall also have power and authority and is hereby directed to make publication in such public gazette or gazettes as may seem to him best adapted to the purpose, giving notice to all persons holders of bonds or coupons of bonds issued by railroad companies under the provisions of the act of January 6, 1855, and asserting a claim against the internal improvement fund of Florida to produce the same and to verify the same before him, that the entire indebtedness of the said fund may be ascertained, and that their rights may be regarded and protected by the final decree to be rendered in this cause.

And it is further ordered that the said master do file his said report at least sixty days before the first Monday in December next, to enable either party to file exceptions to the same, that the said cause may come to a final hearing upon said exceptions and upon bill, answer, exhibits, and testimony at the next term of this court.

December 7th, 1871.

PHILIP FRAZER, *Judge.*

470 FRANCIS VOSE

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLA. *et al.*

This cause came on to be heard on bill, exhibits, answers, etc.; whereupon it is ordered and decreed that there is due to the *company*, Francis Vose, by the trustees of the internal improvement fund of Florida the sum of two hundred and eleven thousand eight

hundred and eighty-five dollars and forty-five cents upon the past-due coupons of one hundred and ninety-five bonds of the Florida Railroad Company, numbered as follows, viz: Number four hundred and thirty-three (433); numbers four hundred and ninety (490) to five hundred and eighteen (518), both inclusive; numbers six hundred and forty-nine (649) to six hundred and fifty-six (656), both inclusive; numbers six hundred and fifty-seven (657) to six hundred and ninety-nine (699), both inclusive; numbers seven hundred and sixteen (716) to seven hundred and twenty-five (725), both inclusive; numbers seven hundred and twenty-seven (727) to seven hundred and thirty-six (736), both inclusive; numbers seven hundred and thirty-eight (738) to seven hundred and forty-seven, both inclusive; numbers nine hundred and four (904) to nine hundred and fourteen (914), both inclusive; numbers nine hundred and fifteen (915) to nine hundred and seventeen (917), both inclusive; numbers nine hundred and eighteen (918) to nine hundred and twenty-nine (929), both inclusive; numbers twelve hundred and thirty-three (1233) to twelve hundred and forty-nine (1249), both inclusive; numbers ten hundred and forty-six (1046) to ten
471 hundred and eighty-six (1086), both inclusive.

And that the further sum of six thousand eight hundred and twenty-five dollars will fall due on the first day of March, in the year eighteen hundred and seventy-two, and semi-annually thereafter on the first days of September and March until the first day of March, in the year eighteen hundred and ninety-one, making an aggregate of two hundred and seventy-three thousand dollars, when the bonds themselves, one hundred and ninety-five thousand dollars, will also fall due.

Secondly. It is further ordered and decreed that the trustees of the internal improvement fund of Florida hold, subject to the payment of the coupons already due and of the said coupons which are to fall due, the sum of —, bonds, securities, choses in action of the value upon the face of —, and lands to the title to which was vested in them by the act of January 6, 1855, and which has not been divested by subsequent conveyances of contract of conveyance.

Thirdly. It is further ordered and decreed that the said the trustees of the internal improvement fund hold, subject to the payment of the principal of said bonds when they shall fall due, the sum of — and bonds, securities, and choses in action amounting in value upon the face of them to —, but of the market value of —, said money and said bonds and choses in action being part of the sinking fund provided by the said act of January 6, 1855, for the payment of said bonds, and which said sinking fund is to be augmented semi-annually by the amount of one-half of one per cent. on the amount of said bonds.

Fourthly. It is ordered and decreed that the said trustees
472 do, within thirty days from the date of this decree, exercise the power conferred upon them by the second section of said act of 1855 by vesting *pro rata* of all the assets appertaining to said sinking fund in the bonds of the Florida Railroad Company held by the said Francis Vose—that is to say, one hundred and ninety-five, by

delivering to said Vose all of said assets applicable to the payment of the said bonds held by him; said assets, where the same consist of securities, bonds, or other choses in action, to be valued by two arbitrators, one to be selected by the said Francis Vose, the other by the treasurer of the said the trustees, etc., and in case of disagreement between them the said arbitrators to call in an umpire, to be selected by them, and to take from said Vose, in exchange for said assets, bonds of the Florida Railroad Company to the full amount of the same, so valued as aforesaid, and that semi-annually, within ten days after the receipt of the same, the said trustees do in like manner invest the said company's — of one-half of one per cent., to be paid by the said Florida Railroad Company to the said sinking fund until the said *the* amounts so paid to the said Francis Vose, with interest thereon at seven per cent. per annum compounded, shall amount to the entire principal of his said bonds, or until the said Francis Vose shall have been otherwise paid under this decree.

Fifthly. It is further ordered and decreed that the articles of agreement entered into on the 31st May, 1871, by and between the Trustees of the Internal Improvement Fund of Florida, party of the first part, and the Jacksonville, Pensacola and Mobile Railroad Company, party of the second part, of which the following is a copy:

473 Copy.

Articles of agreement, entered into by and between the Trustees of the Internal Improvement Fund of the State of Florida, created by virtue of an act entitled "An act to provide for and encourage liberal system of improvement in this State," approved January 6, A. D. 1855, the party of the first part, and the Jacksonville, Pensacola and Mobile Railroad Company, a corporation created by the laws of the State of Florida, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants hereinafter set forth and agreed to be performed by the said party of the second part and of the sum of $500 to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to convey to the said party of the second part all of the lands held by them in trust or which may hereafter be held by them in trust under and by virtue of an act to encourage a liberal system of internal improvement in this State, approved January 6, 1855, and all the acts amendatory thereto, as set forth and specified in the act or acts aforesaid, excepting the lands that have been heretofore conveyed and contracted to be conveyed to the Southern Inland Navigation and Improvement Company by the said trustees, and the land contracted to be conveyed to Hubbard L Hart, and the land granted by an act of the Legislature of the State of Florida to the Aquatic and Tropical Plant Propagating Company not heretofore legally conveyed and contracted to be conveyed by the said trustees to any person or persons, corporation or corporations, subject to all the terms, conditions, and restrictions of any such contract or contracts

entered into by the said trustees with any person or persons,
474 corporation or corporations, excepting such corporations or persons as are hereinbefore especially excepted therefrom, the said party of the second part promising and agreeing to perform with any such person or persons, corporation or corporations, the agreement as made and entered into by the said parties of the first part, and to dispose of the said lands with the view to their settlement, cultivation, — drainage according to the spirit of section sixteen of the aforesaid act approved January 6th, A. D. 1855, and the act of granting the swamp and overflo*a*ted land grant of 1850.

And the said parties of the second part, in consideration thereof, do hereby covenant and agree with the said party of the first part to satisfy and pay all the existing outstanding liabilities of any kind and nature that constitute a legal lien upon the said internal improvement fund, and to cancel and surrender all evidence of such legal liabilities to the said parties of the first part; and the said party of the second part does further covenant and agree to pay the sum of one hundred thousand dollars to the said party of the first part for the benefit of the said internal improvement fund and, further, to complete a line of railroad from Jacksonville, Florida, to Mobile, Alabama, by extending said railroad from Quincy, its present terminus, through the counties of West Florida to Mobile aforesaid, said railroad to be in all respects a first-class railroad and to be completed within five years from this date, deeds of all said lands to be executed by the parties of the first part and delivered to parties of the second part as soon as a certain injunction is either dissolved or modified, said injunction having been issued by his honor
475 Judge Woods in the circuit court, in the northern district of Florida, in the suit of Vose against Harrison Reed *et al.*, on the 6th day of December, A. D. 1870.

And it is expressly understood that nothing is contracted to be performed in this instrument of writing that shall bring the said parties of the first part into a contempt of said injunction, and the said party of the second part shall furnish good and sufficient guarantees to the said party of the first part of their ability to faithfully perform the undertakings herein set forth.

In witness whereof the above-named parties have hereunto set their hands and seals this the thirty-first day of May, one thousand eight hundred and seventy-one.

(Signed) HARRISON REED, *Gov.* [L. S.]
(Signed) S. B. CONOVER, *Treas.* [L. S.]
(Signed) JAS. B. C. DREW, *Att'y Gen'l.* [L. S.]
(Signed) J. S. ADAMS, [L. S.]
Com. of L. & Im.
(Signed) M. S. LITTLEFIELD, [L. S.]
Pres. of P. & M. R. R. Co.

Signed, sealed, and delivered in the presence of—
(Signed) O. MORGAN.
(Signed) W. H. GLEASON.
[Corporate Seal, J. P. & M. R. R. Co.]
Attest: (Signed) F. H. FLAGG, *Secretary.*

Be affirmed, made valid and final, as follows, and upon the following terms and conditions—that is to say, the said
476 *the said* the trustees of the internal improvement fund shall forthwith and upon payment *of* the said The Jacksonville, Pensacola and Mobile Railroad Company, or by any other person for it or on its behalf, of the sum of one hundred thousand dollars provided to be paid in said articles of agreement, execute and deliver to M. S. Littlefield, or such person or corporation as he may designate, in writing, a deed or deeds of conveyance for one hundred thousand acres, or thereabouts, of lands which were heretofore and on the 10th day of October, 1870, conveyed to, and on the 7th day of December, 1871, reconveyed to, the Florida Improvement Company, and that said lands be relieved from the injunction order of this court, but that the said one hundred thousand dollars be held by said trustee subject to its further order and decree until the payment hereinafter provided for or to be made by the said Jacksonville, Pensacola and Mobile Railroad Company to the said Francis Vose shall have been actually made, and thereafter to be under the control absolutely of the said trustees.

And they, the said trustees, shall also execute deeds of conveyance to the said The Jacksonville, Pensacola and Mobile Railroad Company of all the lands embraced in said articles of agreement which are not herein otherwise provided for and which are now in possession of the said the trustees under said act of January 6th, 1855, and which have not hitherto been conveyed or contracted to be conveyed to other persons or corporations, but the latter deeds when so executed shall be deposited in the hands and custody of the firm of Brown Brothers and Company, bankers, of New York, to be held in trust by them to deliver the same to the said The Jackson-
477 ville, Pensacola and Mobile Railroad Company upon payment *of* it to the said Francis Vose of his claims aforesaid against the said internal improvement fund upon such terms as may be arranged between the said Francis Vose and the said railroad company, provided such payment be made within ten months from the date of this decree, and provided the said The Jacksonville, Pensacola and Mobile Railroad Company shall have complied with the conditions of the said articles of agreement hereinbefore recited as on their part to be fulfilled, which said compliance shall be indicated to said Brown Brothers and Company for resolution of the said the trustees of the internal improvement fund.

But upon failure by the said railroad company to pay the said claims or to comply with the said condition within the time specified above, then and in that event the said Brown Brothers and Company shall hold the said deeds in trust to cancel the same, and the said lands to revert to the internal improvement fund of Florida and to be subject under the future order of the court to the payment of its just liabilities.

Sixthly. It is further ordered and decreed that the said the trustees of the internal improvement fund of Florida shall execute deeds of conveyance to Edwin A. Studwell, or to such person or corporation as he may designate, in writing, of such lands as were em-

braced and conveyed by the former to the latter, but which said lands were by order of this court reconveyed by said Studwell to said trustees, or such other lands as he may substitute therefor, under the contract made by the Florida Improvement Company with said trustees, and that said trustees of said internal improvement
478 fund of Florida shall further execute deeds of conveyance to the said The Florida Improvement Company for one hundred and fifty thousand acres belonging to said fund now surveyed or to be surveyed by said company or by Edwin A. Studwell, but shall place said deeds when executed in the hands and custody of the said Brown Brothers and Company, to be held by them in trust to deliver the same to the said The Jacksonville, Pensacola and Mobile Railroad Company to the said Francis Vose of his aforesaid claim against the said the internal improvement fund of Florida, as already provided for in this decree.

But should the said the railroad company fail to make such payment in manner and form provided for and within the specified time, then and in that event the said Brown Brothers and Company to hold the said last-mentioned deeds of conveyance to the said The Florida Improvement Company and the said Edwin A. Studwell in trust to cancel the same, and the lands embraced in said conveyances to revert to the said internal improvement fund of Florida, but without prejudice to the right of either party to this pending litigation.

December, 16, 1871.

W. B. WOODS,
Judge U. S. Circuit Court for Northern District of Florida.

479 FRANCIS VOSE

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLA. *et al.*

This cause came on to be heard on bill, exhibits, answer, depositions, and master's report.

Whereupon it is ordered and decreed that the complainant, Francis Vose, is the holder of one hundred and ninety-five bonds of the Florida Railroad Company issued under the provisions of the act of January 6, 1855, entitled An act to provide for and encourage a liberal system of internal improvement in this State, and there is now owing to him two hundred thousand dollars and upwards upon the coupons of said bonds which have already fallen due; that William H. Wagner is the owner of twelve bonds of the Florida Railroad Company, and that there is now owing to him seven thousand four hundred and fifty-five dollars upon the coupons of said bonds which have already fallen due; that Frank W. Webster is the holder of four coupons, amounting to one hundred and forty dollars; that W. T. Webster is the holder of one coupon of thirty-five dollars; that S. J. Turnbull, trustee, is the holder of seven coupons, calling for one hundred and ninety-nine dollars and fifty cents; that W. J. Hines, trustee, is the holder of thirty-two coupons, calling

for eight hundred and thirty four dollars; that A. F. Finlayson is the holder of eighteen coupons, calling for six hun-
480 dred and thirty dollars; all of said last-mentioned coupons being due and unpaid and being coupons of bonds issued by the Pensacola and Georgia Railroad Company; that G. A. Huling is the holder of sixteen coupons of the bonds of the Florida, Atlantic and Gulf Central Railroad Company, calling for five hundred and sixty dollars; that W. S. Cowardin is the holder of fifteen coupons of bonds issued by the said Florida Railroad Company and calling for five hundred and twenty-five dollars; that J. J. McNish and Co. are the holders of five coupons of bonds issued by the Tallahassee Railroad Company, calling for thirty-five dollars, and nineteen coupons of the said Pensacola and Georgia Railroad Company, calling for four hundred and sixty-nine dollars; all of which last-named coupons are due and unpaid and all of which bonds were issued under the provisions of the act of 1855.

Secondly. It is further ordered and decreed that the securities belonging to the sinking fund provided by said act of 1855 and now held by A. Doggett, Esq., receiver, be sold by him at public outcry, at the city of Jacksonville, upon twenty days' notice, to be given by publication through one newspaper in the said city of Jacksonville and another in the city of Tallahassee, and that the proceeds of said sale be invested in the bonds so held by the said Francis Vose and the said William H. Wagner in the proportion of one hundred and ninety-five to twelve.

Thirdly. It is further ordered and decreed that the said receiver shall have power and authority to demand and receive all
481 moneys which may be already due or which may hereafter become — to the said internal improvement fund of Florida, whether by the purchasers or present owners of the railroads which have been sold under the provisions of said act of 1855 or by any person or body corporate whatsoever; and that it shall be competent for him to make any person or body corporate who shall contest the validity of any claim which he may assert by virtue of this decree a party defendant to this suit for the purpose of enforcing the collection of such claim should the same be adjudged valid; and whenever any moneys shall come into the hands of said receiver under the provisions of this clause of this decree it shall be his duty and he is hereby instructed and empowered to invest the same in the bonds of the said railroad companies issued under the provisions of the said act of 1855 in manner and form and in the ratio set out in the second clause of this decree.

Fourthly. It is ordered and decreed that this case be referred to A. Doggett, Esq., master, etc., for further investigation and report to this court under the order of reference made at the last term; but more especially to call for and audit all coupons which may be held by persons asserting a lien for the payment of the same against the said the internal improvement fund, the said master to give due notice to all parties in interest of the time and place when lists of coupons may be submitted to him shall be open to investigation, allowing to all such persons the opportunity to object to the certified ap-

482 proval of the master upon grounds to be stated in writing, requiring the production, when necessary and called for, of all coupons, the lien of which shall be thus contested, to hear the parties submitting and contesting the same, and to report his decision thereon to this court at least thirty days before the next term thereafter, to which said decision either party may except under the ordinary rules of chancery practice, and *and* that no coupon shall be paid by the trustees of the internal improvement fund except under the order of this court.

Fifthly. It is ordered and decreed that the judgment hereto granted in this cause be continued in full force and effect, and that the appointment of a receiver hitherto made be continued for the purposes of that appointment.

December 18, 1872.

W. B. WOODS, *Judge.*

483 FRANCIS VOSE, Complainant,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND *et al.*, Defendants.

It is ordered, adjudged, and decreed that the above-entitled
484 cause be referred to A. Doggett, Esq., master, etc., for further investigation and report, more especially under the fourth clause of the decree of this court, rendered on December 28th, 1872; that he forthwith give notice by circular letter to all persons who have registered coupons with him under the provisions of said decree that they shall place in his custody and keeping the said coupons so registered with a view — payment in accordance with the established rule of priority of date; that he forthwith give notice by publication to all persons who may hold coupons of bonds claiming a lien upon the said the internal improvement fund, and which have not yet been presented, that they shall present the same to him for examination and registry before the first day of April, A. D. 1874, and that if they remain longer in default they shall be debarred from participating in the benefits of the decrees rendered by this court in this cause.

That said master give due notice of the times and places when he will hold all coupons, whether such as have already been registered or such as may thereafter be registered and placed in his custody, open for the inspection of any party in interest, allowing to such party full opportunity to move that any such coupons be rejected upon the ground that they have no just claim upon the said fund, such motion to be made upon petition setting out such facts as shall indicate cause for reasonable suspicion; that said master shall enter the cases so made upon a special docket to be kept by him for that purpose; that he shall give due notice to the parties thereto of the time and place when he will receive testimony and hear argument touching the issues made thereon, whether they be issues of law or

fact; that he shall have the power to subject any holder
485 of such coupons so challenged to examination under oath as to his title to the same, as to the person from whom he obtained the same, and as to any matter whatsoever touching the validity of the same; that he shall apply for and receive from the trustees of the internal improvement fund and the officers of State all books and records relating to the issue of bonds which bore such coupons or to the payment of the same; that he shall demand from the officers of any railroad company or any other person whatsoever any and all books or records relating to the same subject-matters, and shall have power to invoke any time the process of this court to enforce the production of any such book or records; that such books or records shall be held open for inspection and for reference on the trial of the cases, which may be made and docketed in manner and form as herein provided for.

That after hearing the said causes so made the said master shall deliver his decision in writing, from which decision either party may enter an appeal to this court within thirty days from the rendition thereof, and it shall be — duty of said master to report the said causes with all of the testimony and his action thereon. In default of such appeal his said decision shall be final and conclusive.

2. It is further ordered, adjudged, and decreed that on the first day of July, 1874, the said master shall submit to either judge of this court a statement of the balance of the moneys which may be at that date in his hands produced by the decrees in this cause which have already been rendered and applicable to the payment of said coupons, and also a statement of coupons then in his custody
486 which, from their priority, shall be entitled to said money, and it shall be competent for the said judge to direct the payment of the same.

3. It is further ordered and decreed that the said master shall cancel all coupons now in his custody which have been paid, all coupons which he shall hereafter pay as they shall be paid, keeping an accurate account of the same, to be supported by the cancelled coupons themselves as vouchers.

4. It is further ordered, adjudged, and decreed that the said master shall inquire and report from the testimony already taken in this cause, and from testimony hereafter to be taken if necessary, the amount which should be decreed against any person defendant in this cause for damages resulting to said complainant and others from any acts violative of the trusts created by the statute of January 6, 1855, and that his report be filed with the clerk of this court at least ninety days before the next term thereof, and that immediate notice of such filing be given to such party defendant.

It is further ordered, adjudged, and decreed that the contracts or agreements entered into by the trustees of the internal improvement fund with the corporation known as the Southern Inland *and* Navigation and Improvement Company be rescinded, and the same are hereby declared to be null and void, and the lands undertaken to be conveyed or contracted to be conveyed shall be restored to the

said internal improvement fund and be subjected to sale by the agents appointed by decree of this court rendered during the term in accordance with the provisions of said decree.

W. B. WOODS, *Judge.*

487 FRANCIS VOSE, Complainant,

vs.

HARRISON REED and Others, Defendants.

Whereas a petition was filed in this cause on the 18th day of May, 1875, by the Southern Inland Navigation and Improvement Company praying, first, that the decree made by the court in this cause on the 4th day of December, 1873, so far as relates to said company, be vacated; secondly, that said company have leave to file such pleadings as may be advised by counsel to be necessary for the defence of its interests, and, thirdly, for such further order as the court should deem meet and reasonable, and an amendment of said petition was filed by said company on the 2nd day of September, 1876, but without making any additional prayer, and an answer to said petition was filed by the complainant, verified on the 16th day of February, 1877;

And the parties, by their counsel, having agreed to argue the motion for granting the prayer of said petition before Justice Bradley, at his chambers, in the city of Washington, and the same coming on to be heard before the said justice on the 9th day of March, 1877, and being argued by W. G. M. Davis, Esquire, on behalf of the said Southern Inland Navigation and Improvement Company, in favor of said motion, and by J. B. C. Drew, Esq., on behalf of the complainant, against said motion, and the said justice having advised thereupon and being of opinion that the said company was duly made a party to the bill of complaint in this cause, and was served with process of subpœna therein, and failed and neglected to
488 appear and answer to the said bill, it is ordered that the said motion and the prayer of said petition be denied with costs.

Washington, March 26, 1877.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the U. S. and Circuit Justice of the 5th Circuit.

489 FRANCIS VOSE

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA *et al.*

This motion came on to be heard and was argued by counsel, and the court having considered the papers and argument of counsel and being satisfied from the showing made that the conduct of the present board of trustees has been characterized by an industry, energy, and efficiency which should be commended, and wishing that the

court should not be understood as in any manner criticising the action of the present board or as interfering with their powers and duties as to making sales and titles to lands of said fund, but believing that it may be an advantage to the board and fund that an agent, as contemplated by the decrees of December, 1873, and May, 1875, should be appointed to supply the vacancy occasioned by the resignation of Messrs. Swann, Corley, and Williams, with the powers indicated by such decree—

It is ordered that Sherman Conant, the marshal of the northern district of Florida, be and is appointed agent with the powers aforesaid to make sale of the lands of the internal improvement fund in the place of Messrs. Williams, Swann, and Corley under the decree of December 4th, 1873, as modified by the decree of May 18, 1875.

Done, ordered, and decreed in open court this sixteenth day of February, A. D. 1878.

THOMAS SETTLE, *Judge.*

490 December Term.

FRANCIS VOSE

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA

It is ordered that the decrees heretofore made herein be so far modified as to permit and authorize the said defendants to receive in payment for lands belonging to the internal improvement fund which they may hereafter sell one-half of the coupons of the bonds issued, under the provisions of the internal improvement act, now held by any one of the parties plaintiff to the said cause or their assignees which have been adjudged to be a good and valid lien upon the lands of said fund, the amount so to be received in each case to be evidenced by the separate certificate of A. Doggett, Esq., master in chancery, showing that such coupons have become part of the decree in the said cause, as well as the entire amount held by such party.

It is further ordered that the said master shall keep a record copy of all certificates which he may so issue in a book to be provided for that purpose.

The question as to whether the coupons of the Pensacola and Georgia Railroad Company are payable from the internal improvement fund pending on motion for rehearing in this court, it is ordered that the holders of any such coupons shall be authorized to designate such lands belonging to said fund as they may desire to take in payment of one-half of their coupons, verified under order of this court, and the trustees of the I. I. fund shall reserve from sale for the benefit of such parties the lands so designated until the question of the liability of the fund for
491 said coupons shall be finally adjudicated, or the lands so designated may be sold by said trustees upon the written order or consent of such coupon holders, and the money received therefor

shall be paid by the trustees to the receiver of this court, to be held as a special fund to be paid over to such coupon holders if their claims shall be decided to be payable from the fund; otherwise to be placed in the general fund for distribution as other monies received from sales of land.

THOMAS SETTLE, *Judge.*

492 *Bill for Injunction and Relief.*

FRANCIS VOSE *vs.* HARRISON REED *et al.* & TRUSTEES *et al.*

This cause came on to be heard upon the petition of the complainant praying for a rule upon Harrison Reed, Rob't H. Gamble, Frank W. Webster, Simon B. Conover, John S. Adams, and J. B. C. Drew and their successors, trustees of the internal improvement fund of the State of Florida, to show cause why an attachment for contempt should not be issued against them and why a receiver should not be appointed to take charge of the monies and securities constituting the trust fund, and upon the answer to the said petition, and was urged by counsel, and thereupon it is ordered by the court that an attachment as for a contempt be issued against the said Harrison Reed, Rob't Gamble, Frank W. Webster, Simon B. Conover, and John S. Adams, to be made returnable to the next term of the court, to be holden on the first Monday in December next, at the court-room at the city of Jacksonville; that when arrested upon said attachment they shall be severally committed to jail unless they shall enter into bond in the sum of five thousand dollars, each with sufficient sureties, to answer for the said contempt at the time aforesaid. It is further ordered that Arestides Doggett, Esq., be, and he is hereby, appointed receiver of all monies and securities belonging to said trust fund in the hands of said trustees or any other person or persons whomsoevers; to demand and receive the same and
493 to sue for and receive the same, and also to demand and receive from said trustees from time to time as any monies may come into the hands of said trustees belonging to said fund all such monies, and to demand, sue for, and receive from any and all persons having in their hands or control any of said trust funds or any property belonging to said fund, or who have misapplied said fund or converted any part thereof to their own use.

That the said trustees and any of these defendants in this cause having in possession any part of said fund are hereby ordered to pay to the said receiver all monies in their possession or control, and to deliver up to said receiver all securities or evidences of indedtedness belonging to said fund, and to pay over to said receiver from time to time all monies which may come into their hands from the sale of land or other source whatever, together with all books and papers necessary to enable the receiver properly to discharge his duty in the premises. It is further ordered that the said receiver do enter into bond for the faithful discharge of his duty, with sufficient sureties, in the sum of ten thousand dollars, and that on the

first Monday of each and every month after having taken upon himself the said receivership, he do file in the clerk's office a full and detailed report of all his doings in the premises, together with his charges and the costs and expenses incurred by him, and that the said receiver do proceed without delay to the discharge of his said duties aforesaid. It is further ordered that the clerk do fur-
494 nish said receiver a copy of this order duly certified.

Done in open court this the first day of June, A. D. 1872.

PHILIP FRASER, *Judge.*

495 A book entitled as follows was introduced and filed at the hearing in this cause:

An act to incorporate the Union Trust Company of New York.

Also the original deed from the trustees of the internal improvement fund to the Southern Inland Navigation and Improvement Company of the State of Florida.

496 Copied from the record of proceedings of the Southern Inland Navigation & Improvement Company, page 29:

Resolved, That the Union Trust Company of the City of N. Y. be, and *are* hereby, made the trustee of the Southern Inland Navigation and Improvement Company for the purpose of holding in trust the lands, canals, rights, and franchise of the said Southern Inland Navigation and Improvement Company for the purpose of securing the payments of certain bonds, the same to be expressed in the mortgage or deed of trust to be executed to the said Union Trust Company of the City of New York.

CHAS. L. MATHER, *Secretary.*

Copied from the record of proceedings of the Southern Inland Navigation and Improvement Company, page 38:

The following resolution was offered by M. S. Littlefield, and adopted:

Resolved, That the Union Trust Company of the City of New York be made the agent for the sale and disposition of the bonds of this Southern Inland Navigation and Improvement Company, and that the same shall be sold under the supervision and consent of Willis Gaylord, of number 58 Wall St., N. Y., and that the proceeds be deposited with the National Trust Company of the City of New York to the credit of the Southern Inland Navigation and Improvement Company of the State of Florida from time to time as the same are sold.

497 Copied from the record of proceedings of the Southern Inland Navigation & Improvement Company, page 42:

Resolved, That W. H. Gleason is hereby authorized to deposit the bonds issued by this corporation with the Union Trust Company of the City of New York and to take the necessary receipts therefor.

Copied from the record of proceedings of the Southern Inland Navigation and Improvement Company, page 45:

Resolved, That the Union Trust Company of New York city be, and they are hereby, instructed to sign and forward the City Bank

of London, England, two millions of dollars in the bonds of the Southern Inland Navigation and Improvement Company for sale, and receive the proceeds thereof as a deposit to the credit of the Southern Inland Navigation and Improvement Company and subject to its order, according to the contract existing between Willis Gaylord, Esq., and the Southern Inland Navigation and Improvement Company, and also in accordance with the contract made by said company with the trustees of the internal improvement fund of the State of Florida.

N. H. MORAGNE,
Pres. S. In. Nav. & Imp. Co.
CHAS. L. MATHER, *Secretary*

498 Copied from the record of proceedings of the Southern Inland Navigation & Improvement Company, page 47:

At a meeting of the directors of the Southern Inland Navigation and Improvement Company held this 15th day of February, A. D. 1872, at the city of Jacksonville, Florida, there were present W. H. Moragne, Wm. H. Gleason, and Chas. L. Mather.

The following resolutions *was* unanimously adopted:

Resolved, That the Union Trust Company of New York City be, and is hereby, instructed to send two million dollars of the bonds of the said Southern Inland Navigation and Improvement Company to the City Bank of London, England, by express, the package of said bonds being marked to the said express company; value, two thousand dollars; and

Resolved, That the said Union Trust Company is hereby authorized and directed to instruct the said The City Bank of London, England, to deliver the said bonds, upon the payment thereof, and that said money and proceeds be returned to the said Union Trust Company, to be then retained to the credit and future orders of the said Southern Inland Navigation and Improvement Company.

N. H. MORAGNE,
Pres. S. I. N. & Imp. Co.
CHAS. L. MATHER,
Sec. & Treas. S. I. N. & Imp. Co.

499 Copied from the record of proceedings of the Southern Inland Navigation & Improvement Company, page 49:

At a meeting of the board of directors of the Southern Inland Navigation and Improvement Company held this 22nd day of March, A. D. 1879, in the city of Jacksonville, Florida, there were present N. H. Moragne, Wm. H. Gleason, and Chas. L. Mather.

The following resolutions were unanimously adopted, to wit:

Resolved, That *whereas* the Union Trust Company of the City of New York has been made the trustee of the Southern Inland Navigation and Improvement Company to *recur* the proceeds of the sale of the first-mortgage bonds of the said corporation, said bonds being now on deposit or to be deposited for sale with the City Bank of London, England, by the said Union Trust Company under and by

virtue of a resolution of the board of directors of the said Southern Inland Navigation and Improvement Company.

And be it further resolved, That C. H. Allen, Esq., of the city of New York, is hereby constituted and appointed the agent of the Southern Inland Navigation and Improvement Company, with full power to fix the price of said bonds, the terms and conditions of the sale as he shall deem for the best interest of the company, the said City Bank of London to receive all monies arising from the sale of said bonds in accordance with instructions received by the said City Bank of London from the Union Trust Company of the City of New York.

500 Copied from the record of proceedings of the Southern Inland Navigation & Improvement Company, page 59:

PALATKA, FLORIDA, *July 7th*, 1874.

At a meeting of the board of directors of the Southern Inland Navigation and Improvement Company the following resolutions were unaniously adopted, on the 7th of July, A. D. 1874:

Resolved, That Wm. H. Gleason, president of the Southern Inland Navigation and Improvement Company, by himself or through his agents, attorneys, or substitutes, is hereby fully authorized and empowered to negotiate, sell, dispose of, hypothecate any or all of the first-mortgage bonds of said company, amounting to five million dollars, secured by a deed of trust or mortgage on the franchise and all the lands and property belonging to said company, and made payable to the Union Trust Company of the city of New York or bearer, dated March 20th, A. D. 1871, with full power and authority to said president, his agents, attorneys, or substitutes, to negotiate, sell, dispose of, or hypothecate any or all of the "land scrip" of said company, amounting to twenty million dollars, dated December 2nd, A. D. 1873, also secured and provided for in said deed of trust or mortgage on the land grant of two million acres of land belonging to said company; and the said Wm. H. Gleason, as president of the said company, is further authorized and empowered by this board to borrow money for and on account of said company
501 and to execute and deliver to the lender a promissory note or notes in the name of said company for the amount of the money so borrowed, with the interest thereon, and to hypothecate or pledge such portion or portions of said first-mortgage bonds as he may deem proper and necessary to secure the repayment of such loan or loans, with the interest thereon, and with power attached to such note or notes to authorize the holder of said note or notes to sell said bonds so hypothecated or pledged to repay said loan when, in case default shall be made by this company, to pay said note or notes at their maturity, and the monies so realized from the sale of said bonds, scrip, and said loans shall be deposited in the City Bank of London, England, or in such other bank as this company may order, to the credit and order of the Union Trust Company of the city of New York, for the benefit of the said The Southern Inland

Navigation and Improvement Company, and to be used in the improvement and completion of said water line, deducting from such sales or loans the commission and charges for selling said bonds and scrip and for obtaining said loan; the said Wm. H. Gleason, as president, is further authorized and empowered to execute and deliver a proper "power of attorney," in the name of said Southern Inland Navigation and Improvement Company, to John Fry, of the city of New York, and J. P. O. Sulivan, of the city of Paris, France, or such other person or persons as he may elect, authorizing them or either of them or their substitutes to sell and nego-
502 tiate said bonds and said scrip, and to obtain a loan of three hundred and forty-five thousand dollars in United States gold coin upon said note or notes, and to hypothecate of said bonds a sufficient number to secure said loan or loans in manner aforesaid, hereby granting to Wm. H. Gleason, his agents, attorneys or substitutes, all such other and further powers and authority to do and perform everything necessary in the premises, whether the authority is specifically herein granted or not, the Southern Inland Navigation and Improvement Company hereby ratifying and confirming all acts in the premises which the said Wm. H. Gleason, as such president, and his agents, attorneys, and their substitutes may do or cause to be done lawfully by virtue of this resolution.

Resolved, That The Union Trust Company of New York City be, and is hereby, instructed and authorized to deliver to Wm. H. Gleason, president of the Southern Inland Navigation and Improvement Company, any and all of the bonds of said company deposited with the said company or the City Bank of London, England, or to such person or persons as he may direct, and to receive the moneys, upon the delivering of the said bonds or any part thereof, which may be received from the sale of said bonds or which may be received upon any loan which may be made by the hypothecation or pledge of any of said bonds, and to hold the moneys so received for the use and benefit of the said, The Southern Inland Navigation and Improvement Company.

503 Resolved, That the power of attorney heretofore granted, made, and executed by the Southern Inland Navigation and Improvement Company to Charles H. Allen, of the city of New York, is hereby revoked and recalled.

JACKSONVILLE, *April 3rd*, 1875.

At a meeting of the board of directors of the Southern Inland Navigation and Improvement Company, held at Jacksonville on the 3rd day of April, A. D. 1875—President Gleason in the chair—the following business was transacted:

The death of Charles L. Mather, the secretary of the company, was suggested, and upon motion John S. Adams was chosen as acting secretary.

It having been suggested that the authority and power hitherto granted to W. H. Gleason, president, to act for and in behalf of the company in negotiating the sale or hypothecation of the bonds and

scrip of the company, such power and authority was made more full and specific by the following resolution:

Resolved, That William H. Gleason, president of the Southern Inland Navigation and Improvement Company, by himself or through his agents, attorneys, or substitutes, is hereby fully authorized and empowered to negotiate, sell, dispose of, or hypothecate any or all of the first-mortgage bonds of said company, amounting to five millions of dollars, secured by a deed of trust or mortgage on the franchise and all the lands and property belonging to said company and made payable to the Union Trust Company of
504 the City of New York, or bearer, dated March 20th, A. D., 1871, with full power and authority to said president, his agents, attorneys, or substitutes, to negotiate, sell, dispose of, or hypothecate any or all of the land scrip of said company, amounting to twenty millions of dollars, dated December 2nd, A. D. 1873, also secured and provided for in said deed of trust or mortgage on the land grant of two million acres of land belonging to the company. And the said William H. Gleason, as president of said company, is further authorized and empowered by this board to borrow money for and on account of said company, and to execute and deliver to the lender a promissory note or notes in the name of said company for the amount or amounts of the money so borrowed, with interest and charges thereon, and to hypothecate or pledge such portion or portions of said mortgage bonds, being the first mortgage bonds, as as he may deem proper and necessary to secure the repayment of such loan or loans, with the interest and charges thereon, and with power attached to such note or notes to sell such bonds or hypothecated or pledged to repay said loan in case default shall be made by this company to pay said note or notes at their maturity, and the money so realized from the sale of said bonds, scrips, and said loan or loans shall be for the benefit of the said Southern Inland Navigation and Improvement Company, and to be used in the improvement and completion of said water line, deducting from such
505 sale or loans the commission and charges for selling said bonds and scrip and for obtaining said loan or loans.

The said William H. Gleason, as president of this company, is further authorized and empowered to execute and deliver one or more proper powers of attorney, in the name of said Southern Inland Navigation and Improvement Company, to such proper person or persons as he may elect, authorizing them or either of them, or their substitutes, to sell and to negotiate said bonds and said scrip, and such other bonds and securities as this company may hereafter decide to issue in lieu of said bonds and scrip and to obtain a loan or loans of money upon said note or notes, and to hypothecate of said bonds a sufficient number to secure said loan or loans in manner aforesaid—

Hereby granting to said William H. Gleason, his agents, attorneys, and substitutes, all such other and further powers and authority to do and perform everything necessary in the premises, *wherein* the authority is specifically granted or not—

The Southern Inland Navigation and Improvement Company hereby ratifying and confirming all acts in the premises which the said William H. Gleason, as such president, and his agents, attorneys, and substitutes may do or cause to be done lawfully by virtue of this resolution.

The resolution was then adopted by unanimous vote.

And to guard against the possible insufficiency of a resolution of a former meeting, upon motion the following resolution, viz:

506 Resolved, That the Union Trust Company of New York and the City Bank of London, England, be, and they are hereby, instructed and authorized to deliver to William H. Gleason, president of the Southern Inland Navigation and Improvement Company, or to his representatives, any and all of the first-mortgage bonds of the last-named company that he may wish to use which are now on deposit with or in possession of the said Union Trust Company and the said City Bank.

And the said William H. Gleason, president of the Southern Inland Navigation and Improvement Company, or his representatives, has been and is hereby authorized to receive the monies that may be obtained upon any loan which may be negotiated and secured by the hypothecation or pledge of any of said bonds and to hold or deposit the money so received for the use and benefit of the said The Southern Inland Navigation and Improvement Company to secure the required completion of their works and improvements.

Was then read, discussed, and adopted by a unanimous vote.

Copied from the record of proceedings of the Southern Inland Navigation and Improvement Company, page 83:

On motion of Director Chas. D. Willard, the following resolution, having first been carefully considered and discussed, was unanimously adopted, and — the words and figures following, to wit:

Resolved, That the agreement executed between this com-
507 pany by General Phillip Dale Roddy, therein representing it as attorney, and the Honorable Edward James Reed, M. P., bearing date March 3rd, A. D. 1878, in the words and figures following, to wit:

Articles of agreement, made the 23 day of March, 1878, between the Southern Inland Navigation and Improvement Company of the State of Florida, United States of America, hereafter called "The Company," of the first part, and Edward James Reed, companion of the Bath, member of the institution of civil engineers, fellow of the Royal Society, and member of Parliament, of Broadway Chambers, Westminster, in the county of Middlesex, England, of the 2nd part.

Whereas, by a special act of the Legislature of the aforesaid State of Florida, approved 28th of July, 1878, the aforesaid company was organized and incorporated to promote the interest of said State by encouraging a system of inland navigation and communication therein; and whereas, in further-

ance of the purpose for which it was created, it is the intention of said company to dredge deeper and improve the St. John's and Indian rivers, to connect those rivers by a canal and to connect St. John's river by a canal with the St. Mary's river, so as to enable a steamboat navigation inside from Fernandina to Key West, and to execute such other works as may be necessary or desirable to promote the objects for which said company was organized; and whereas by an act of Congress of the U. S., approved the 28th day of September, 1850, there was granted unto the State of Florida all the unsold swamp and overflowed land of the U. S. within the limits
508 of that State for the purpose of constructing levees and drains therein; and whereas the General Assembly of the State of Florida enacted a law, approved the 6th day of January, 1855, for the management of a liberal system of internal improvement in that State, *for* the second section of which act all the lands granted to the State of Florida by the act of Congress of the 20th September, 1850, and all the funds arising from the sale thereof, were irrevocably vested in 5 trustees; and whereas by the 8th section of the said act of the 28th day of July, 1868, the trustees of the said internal improvement fund were authorized to make such concessions of land to said company to aid in the completion of the improvements contemplated by the said company as the said trustees should deem for the best interests of the State; and whereas, under and by virtue of the before-recited acts of January 6th, 1855, and July 28th, 1868, the trustees of the internal improvement fund granted, bargained, and sold and conveyed to the said company several tracts or bodies of land situated in the counties of Marion, Putnam, St. John's, Orange, Volusia, and Brevard, containing in all one million three hundred and sixty thousand six hundred and sixty-five one-hundredths acres, by deed bearing date the 10th day of February, 1871; and whereas the said company was authorized by an act of the Legislature of the State of Florida, entitled A bill to amend an act approved
509 July 28th, 1868, entitled An act to organize the Southern Inland Navigation and Improvement Company, approved February 1st, 1869, to issue such evidences of debt as the said company should find necessary for carrying into effect the intention of the act, and to mortgage the whole or a part of their real estate and franchises; and whereas under and by virtue of the powers so granted, and in pursuance of a resolution of the board of directors of the said company, the president and secretary of said company made and executed a mortgage or deed of trust to the Union Trust Company of New York, and at the same time made and executed and delivered unto the said Union Trust Company certain first-mortgage land-grant and construction bonds for five million dollars—that is to say, 5,000 bonds of the denomination of 1,000 dollars or 200 pounds each, bearing date May 1st, 1871, and redeemable at the agency of the company in the city of New York or in the city of London on the 1st day of May, 1904, with *the* interest thereon, payable semi-annually, at the rate of 7 per cent. per annum; and whereas the said company duly appointed and constituted Frank Remington Sherwin its agent for the purposes set forth in his letter of attorney,

bearing date the 17th day of April, 1877; and whereas the said company, by its agent, on the 11 day of June, 1877, did authorize and empower Philip Dale Roddey, of the State of Alabama, now residing in London, England—

1. To negotiate for and obtain in the name and place and for the use of said company temporary loans to the extent of 50,000
510 pounds sterling for the time, at the rate, and on the terms and conditions declared in the agreement between said company, by its said agent, and the said Roddey, bearing date the 16th day of June, 1877.

2. To negotiate a sale of all or any part of the company's first mortgage land-grant and construction bonds at the price or rate and on the terms and *constructions* declared in said agreement.

3. To make and execute in the name of said company all obligations, contracts, and agreements to secure the payment of the said loan or loans and for the sale and delivery of the said bonds; and said agreement contained other clauses not necessary to be specified here.

And whereas the said company, being desirous of inviting and inducing European capitalists to co-operate with it in carrying out the power and works mentioned in its said charter and of securing the co-operation *as* so far as herein stated — the control by an English gentleman of engineering eminence and commercial experience of the works proposed to be carried on, the said Philip Dale Roddey, with the consent of Sherwin, as agent of the company, has negotiated with the said Edward James Reed for carrying out the terms of the said contract, dated 16th day of June, 1877, which he, the said Edward James Reed, has consented to do on condition that the terms thereof are enlarged and altered, as herein set forth, and that this agreement is ratified by and at a duly constitued meeting of the company:

Now, therefore, the parties hereto having regard to the premises, divers good and sufficient considerations hereinafter
511 particularly mentioned them thereunto moving, agree and bind themselves, their heirs, successors, assigns, and personal representatives, to do and perform the matters and things *herein* hereinafter stipulated and recited as when and in the manner set forth in these presents, as follows:

The party of the first part agrees and binds itself to show and establish to the satisfaction of the party of the second part or to any person or persons named, deputed, or employed by him for that purpose—

A. That said company was organized strictly in conformity with the law of the State of Florida.

B. That it has continued and now is a corporation lawfully existing and exercising all the rights, privileges, and powers with which it was endowed by its charter of the 28th of July, 1868, and its amended charter approved Feb. 1st, 1869.

C. That it has done no act which could work a forfeiture of any of its rights and privileges, and that it has not omitted to do any act which could have a like effect.

D. That the grant or grants of land and of powers, privileges, and franchises to the said company were legally made by the State of Flordia and by the board of trustees of the internal improvement fund respectively, and that each and every of such grant is valid and operative.

E. That the said company could and did exercise a legal right in creating the obligations of its first-mortgage land-grant construction bonds and securing payment of the same by the mortgage of its real estate, privileges, — franchises in manner and form as and for
512 the purposes in the deed of mortgage or trust deed above recited — set forth.

F. That as existing, valid, legal, binding obligations the said company has now the right and power to dispose of and deal with said bonds as in the manner hereinafter undertaken by the said company so to do.

G. That under and by virtue of its charter and amended charter hereinabove recited and under and by virtue of the public law of the State of Florida it had full power and authority in law and in fact to do all and every the act or acts, thing or things, whatever heretofore done and performed by itself and by each and all of its officers and agents in its behalf, and has now power, authority, and right, valid and sufficient in law and in fact, to bind itself, its real estate and franchise, in the manner and to the extent hereinafter set forth.

2. The said company shall show and establish the facts and things hereinabove recited at its own proper costs and charges within a period of 4 months, unless by the written consent of the said Edward James Reed the time for doing so shall be extended.

3. If during the investigation herein contemplated to be made or at any time hereafter any act of the Legislature of the State of Florida or any act of mission or commission on the part of the said company or its agents or on the part of any person or persons or body or bodies politic or corporate in privity or otherwise, with said company touching the land or franchise of said company shall appear or occur of such character as to create in the mind of said
513 Edward James Reed or any person or persons acting therein on his behalf a doubt as to the validity of the title of the said Company in and to the hereinbefore-recited lands and franchise of the said company or of the validity of the mortgage given as aforesaid to secure the payment of the aforesaid first-mortgage land-grant and construction bonds, then and in that case and before the said Edward James Reed shall be required to pay or advance any sum of money in pursuance of this agreement, or in case he shall have so paid or advanced any sum or sums of money then before he shall be required to pay or advance any further additional sum or sums of money in pursuance thereof, the said company shall, and it hereby agrees and binds itself, its successors and assigns, *and* its or their proper costs and charges, to procure to be done by the board of internal improvement commissions or by the Legislature of the State of Florida or by both of them as the facts or the nature of the case may require, and also to do by legal and appropriate measures and

means on its own part all and every the acts, deeds, and things whatsoever which to the said Edward James Reed or to the person or persons acting therein on his behalf shall seem necessary, proper, and sufficient to vest an indefeasible title in and to the said lands and franchises in said company in such manner, and that the said lands and franchises shall be a perfect and valid security for the payment of the hereinbefore-mentioned five thousand first-mortgage land-grant convertible construction bonds, according to the
514 tenor of said bonds and the true intent and meaning of the mortgage deed made and executed by the said company on the 20th day of March, 1871, to the Union Trust Company of New York or the trustees for the holders of said bonds.

4. The said Edward James Reed binds himself by these presents with and to the said company, upon being satisfied of the hereinbefore-recited facts as to the manner hereinbefore contemplated, and within a period of 12 months from and after the date of giving his written admission of such satisfaction, to lend or advance or to procure to be advanced or lent to the said company temporary loans to the aggregate amount of 150,000 pounds for a period of two years from the date of each loan, and the said company hereby agrees to accept such loans and to pay to the said Edward James Reed or to his executors, administrators, or assigns or his or their nominees or nominee interest upon said loans from the respective dates thereof at the rate of 10 per cent. per annum, the said interest to be payable half-yearly in advance, any unpaid interest to bear the same rate of interest as the loans. The said loans are to be made in the manner following—that is to say, the first loan of fifty thousand pounds or any part of it may be made at the signing of or at any time within 3 months of the date of this agreement, and of the amount a sum of twenty-five thousand pounds is to be retained by the said Edward James Reed and applied so far as may be required for that purpose, to realize the first-mortgage land-grant convertible construction bonds herein named from the present obligations and to cover
515 interest, payable in advance, on the said sum of twenty-five thousand pounds and on other payments on account of said company.

5. It is further agreed that upon the signing of these presents by the said Edward James Reed the said sum of twenty-five thousand pounds shall be considered as advanced by him on account of the said company and shall bear interest accordingly, and the said first-mortgage bonds and the lands of said company shall be charged therewith, and the said bonds shall be held by the said Edward James Reed until repayment thereof, with interest.

6. The disposition of the said sum of twenty-five thousand pounds having already been agreed upon between the parties hereto, the said Edward James Reed shall not, nor shall his executors or administrators, be required to give any further account thereof to the said company.

7. The balance of the first loan of fifty thousand pounds shall be advanced to the said company upon the stipulation hereinbefore fully complied with.

8. The balance of the said one hundred and fifty thousand pounds shall be advanced to the said company by the said Edward James Reed in such amounts and at such times as the progress of the company's operation may, in his opinion and discretion, render desirable.

9. In the event of any sum or sums lent to the company or the price of any bonds purchased or agreed to be purchased, but which from any cause shall remain in the hands of the said Edward James Reed to the credit of the company, accumulating, after all deductions beyond the account of fifty thousand pounds, the excess
516 above that amount shall be invested with the joint concurrence and in the joint names of the parties hereto in securities of the American or English Government or in such other securities as the said Edward James Reed and the said company shall agree upon and select, and the interest thereon shall accrue to the benefit of the said company.

10. The said company, after incurring an expenditure or liability other than that provided for in this agreement from and after the date hereof, agrees to show to the satisfaction of the said Edward James Reed or of his representatives that such expenditure or liability will be to the advantage of the company and will legitimately and beneficially further the objects herein recited and to obtain the approval or the approval of his representatives in writing of the same, and the said Edward James Reed shall not be required to advance any sum of money to meet any such expenditure or liability whatever, nor shall any sums advanced by him be so applied unless and until his approval of the manner in which work has been performed or value otherwise rendered to the company has been formally certified by him or his duly authorized representatives.

11. The said company also agrees to furnish to the said Edward James Reed full and particular half-yearly accounts of all expenditures and of all its receipts and payments on account of income from and after the date of this agreement.

12. The said Edward James Reed shall be entitled to deduct and retain from all amounts to be lent by him on interest from time to time to the said company, inclusive of the first loan of fifty
517 thousand pounds, and also on all sums of money borrowed by the said Edward James Reed for the company from time to time, all which respective amounts or sums to lend to or borrowed for the company are hereafter described by the general terms of loans, 10 per cent. of the said respective loans in payment of his charges and commissions for making or effecting such loans. The said loans are to be considered respectively as made and interest thereon is to be reckoned on and from the day on which the said Edward James Reed notified the company or its representatives that he holds the necessary sum at the disposal of the company subject to the fulfilment of the provisions of this agreement, and the charges and commissions due and payable by the said company to the said Edward James Reed in respect of said loans shall be considered by the said company as due and payable on and from the day on which the said Edward James Reed shall so notify the com-

pany. Arrears of interest, if any, may, at the option of the said Edward James Reed, be deducted by him from the amounts of subsequent loans made or effected by the said Edward James Reed to the said company.

13. The said company hereby agrees to give to the said Edward James Reed or to his nominee or nominees the promissory note of the said company at the time of receiving the amount of such loans as aforesaid for the amounts of *which* loans, respectively; and the said company hereby pledges itself to and places under the control of said Edward James Reed the two thousand first-mortgage
518 land-grant convertible construction bonds of the said company, which have already been signed and are a part issue of 5,000 such bonds hereinabove referred to, which said bonds are to be deposited for the purposes of this agreement and on the signing of the same with Messrs. Paign, Smith & Smith, bankers, of London, to be held by them in trust for the said Edward James Reed and to his order; and the said company further agrees at the request of the said Edward James Reed to cause the remaining 3,000 bonds to be duly signed and issued, and will appoint either new or additional trustees, as the said Edward James Reed may elect, in the place of or in connection with the Union Trust Company, such new or additional trustees to be nominated or approved by the said Edward James Reed.

14. The said company hereby agrees, as long as the temporary loans aforesaid or any of them remain unpaid, not to sell or dispose of any part of the 3,000 bonds, which are the balance of the 5,000 bonds aforesaid, except for the purpose of raising money to be applied in payment of the loans aforesaid; and the said company hereby further agrees to obtain from the Union Trust Company aforesaid and to give to the said Edward James Reed an undertaking to give due effect to this stipulation.

15. The said company hereby further agrees and binds itself to sell to the said Edward James Reed or his nominee or nominees at his or their request all or any part of the 5,000 bonds aforesaid, with past-due coupons cut off, at 85 per cent. of the nominal value of the bonds, the difference between the price, 85 per cent. of the
519 nominal value, at which the company agrees to sell and the price at which the said Edward James Reed shall or may so resell; said bonds shall enure to the sole benefit of the said Edward James Reed, and shall be considered as part of his commission. The said Edward James Reed shall have the right and option of selling or purchasing, on the terms above set forth in this clause, all such bonds as may hereafter be created by the company.

16. Before paying over the said 85 per cent. or any part thereof the said Edward James Reed shall be entitled to repay any sums then due on loans and to require the company to satisfy him that the money is to be expended to the advantage of the company in such manner as to legitimately and beneficially further the objects hereinbefore recited.

17. The said company further binds itself to apply to the Legislature of the State of Florida as soon as possible for power to increase

the share capital of the company to an amount equal to the amount of the bonded debt at any time created or to be created, and, in obtaining such power, to create such increased share capital from time to time *pari passu* with the said bonded debt. The shares shall be of the usual approved form, and the contents shall conform to the law authorizing their issue.

18. In consideration of the aforesaid undertaking of the said Edward James Reed the said company undertakes to obtain the assent and engagement of all the shareholders of the said company that they, the said shareholders, reserve for and cause to be allotted and issued to the said Edward James Reed or his nominee or nominees so much of the fully paid-up share capital of the said company as
520 shall be equal to 20 per cent. of the same, and that until such issue of shares the said Edward James Reed or his nominee or nominees shall be entitled to an interest in the real property and franchises of the said company, subject to the mortgage existing therein, equal in value to 20 per cent. of the property of the company. The issuing of the shares of the said company to the said Edward James Reed shall proceed in proportion and *pari passu* with the purchase of the said Edward James Reed of the first 2,000, part of the sum 5,000, bonds of the company, as hereinbefore provided.

19. The said company hereby agrees and binds itself, and when requested by the said Edward James Reed, not otherwise, as soon as the said Edward James Reed shall have made the first of the hereinbefore-mentioned loans or at any time afterwards, to reorganize itself under and in pursuance of the provisions of an act passed by the Legislature of the State of Florida entitled "An act to provide a general law for the incorporation of railroads and canals," approved Feb. 19th, 1874, and to change its present name to the name of the "Atlantic & Gulf Ship Canal Co." or the "Florida Ship Canal Company" or other appropriate name in manner provided in the said act, or in place of such reorganization organize a new company under the said act. Such organization or new company shall be vested with all the rights, powers, privileges, and franchises created or conferred by the said last-named act. The said new or reorganized company shall be vested with and have full power and
521 right to construct, maintain, own, and operate in all its parts "The Atlantic & Gulf Ship Canal" across the peninsula of Florida to the Gulf of Mexico, and shall have and possess the property, rights, privileges, and franchises of the party hereto of the 1st part, and shall be bound by this agreement.

20. The said company also agrees to use its best efforts to procure appropriate legislation in order to have the act under which it is incorporated so amended or modified as to obtain a relinquishment of the right of the State of Florida to purchase the "canals" or "improvements" of the company provided for in sec. 10 of said act; also to amend section 9 of said act so as to take away the right of the State to approve, by the board of trustees of the internal improvement fund, the rate of toll and charges for the use and navigation of the company's canals and improved water course; also to amend section B of the said act and make the same conform to the

provisions of the said act of Feb. —, 1874, upon the same subject-matter, or otherwise amend the said section as the said company shall require and the said Edward James Reed or his representatives shall approve, and to obtain such other appropriate legislation for the new or reorganized company as may become necessary in the premises or as may be necessary in the opinion of the said Edward James Reed to effect any of the purposes herein and hereby intended by the respective parties hereto.

21. The company further binds itself, immediately after reorganization as aforesaid, but only upon the request of the said
522 Edward James Reed, to cause the said new or reorganized company to execute, in due form of law, in the name of such new company, new first-mortgage land-grant convertible bonds in place of existing ones.

22. The said Edward James Reed shall be entitled, without accountability to said company, its successors or assigns, to apply each and every year during the continuance of the agreement a sum from and out of the monies to be lent or advanced in pursuance thereof to the said company, party hereto of the first part, or to any new or reorganized company, as hereinabove provided, or from the sale of bonds or from income a sum, which *of* shall not be less than 18,000 dollars, as part compensation for professional or other advice, control, time, and employment of assistants which he, the said Edward James Reed, may afford or extend to the said company or companies or either or both of them, whether personally or by or through an agent or agents or other *the* person or persons whom he may select or appoint for such service or any one or all of them.

23. The said company, for itself, its representatives, successors, or assigns, further agrees and binds itself to carry out the true intent and meaning of this agreement, and to procure and furnish to the said Edward James Reed or to any person or persons appointed by him in this behalf any other and further powers and authorities which may become necessary to carry the same into effect.

24. And the said company further binds itself not to issue any scrip, as now provided for in said deed of trust, except on demand of the said Edward James Reed, and thereby to the amount
523 of said first-named bonds so sold.

25. Provided always, and it is hereby specially agreed between the parties hereto, That the said Edward James Reed shall not be in any way bound to carry out or proceed with the fulfillment on his part of this agreement, except so far as he shall think fit to act otherwise, unless and until the several statements before recited have been certified to his satisfaction, and the several terms and periods before mentioned or referred to shall not, so far as the said Edward James Reed is concerned, be considered as commencing until he has signified his admission in writing that he is so satisfied as aforesaid, but if such evidence is not furnished within four months from the date hereof the said Edward James Reed shall be at liberty at any time thereafter to terminate this agreement on giving 21 days' written notice to the said company or their agents, unless within that period satisfactory evidence is furnished as aforesaid, but such

termination shall not prejudice the right of the said Edward James Reed in respect of loans then made or to any benefit to which he may have become entitled under this agreement. If the said Edward James Reed shall think fit to act and shall act under this agreement as aforesaid without waiting for the full and formal verification to his satisfaction of the title of the company to the said lands and franchises, this agreement shall be binding upon the company, but such action on his part shall be without prejudice to his own right of having the verification made to his satisfaction, and of withdrawing, as provided in the first part of this clause,
524 in the event of the company failing to verify their title to *the* satisfaction as aforesaid.

In witness whereof the hand and seals of the said Philip Dale Roddey, as such duly authorized agent of the said Southern Inland Navigation and Improvement Company, and of the said Edward James Reed —.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY,
By PHILIP DALE RODDEY, *Its Agent.* [L. S.]
EDWARD JAMES REED. [L. S.]

Witnesses:
W. H. BENNETT,
Sol., 14 Red Lion Square, London.
L. C. DUNCAN,
3 Neunan Court, Cornhill, London.

[Inland revenue, 6d.]

As the attorney-in fact of the Southern Inland Navigation and Improvement Company, I approve the action of the said Philip Dale Roddey as set forth in this agreement, and I hereby confirm the engagements therein entered into by him.

In testimony whereof I hereunto affix my hand and seal the day and year first above written.

FRANK R. SHERWIN. [L. S.]

Witnesses:
W. H. BENNETT.
L. C. DUNCAN,
3 Newnan Court, Cornhill, London.

This agreement has been engrossed and executed in four parts.

Be and the same is hereby, ratified, confirmed, and approved as the act and deed of the Southern Inland Navigation and Improvement Company, and the same is hereby accepted by the company.

On motion, it was resolved that the action of the board in ratifying, confirming, adopting, and accepting the said engagement entered into by and between the company through its agent, Philip Dale Roddey, and Edward James Reed, M. P., of date March
525 23rd, 1878, and the power of attorney from Hon. W. H. Gleason, president of this company, to Frank R. Sherwin, of date the 17th day of April, A. D. 1877, and the letter of instructions from

the said Frank R. Sherwin to General P. D. Roddey, dated Westminster Place Hotel, June 16th, 1877, and the said agreement between the said Southern Inland Navigation and Improvement Company, by the said Frank R. Sherwin, its attorney-in-fact, and the said Philip Dale Roddey, bearing date the 16th day of June, 1877, be, and the same is hereby, referred to the stockholders of this company for their action thereon.

And thereupon, on motion, the meeting adjourned at 2 o'clock p m., to convene at 6 o'clock p. m.

526 In the Circuit Court of the United States for the Northern District of Florida. December Term, 1884. In Chancery.

THE UNION TRUST COMPANY

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and The Trustees of the Internal Improvement Fund of the State of Florida.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz., that the bill of complaint in this cause be, and the same is hereby, dismissed with costs.

April 10th, 1885.

THOMAS SETTLE, *Judge.*

527 United States Circuit Court, 5th Judicial Circuit, Northern District of Florida.

FRIDAY MORNING, *April* 10, 1885.

Court met pursuant to adjournment.

Present: The Hon. Thomas Settle, district judge.

THE UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY *et al.*

Complainants gave notice and applied for an appeal in above cause. It is ordered that appeal be granted, and that complainants give bond of five hundred dollars for costs.

Ordered this court to adjourn until to-morrow morning at 10 o'clock.

528 In Circuit Court U. S., Northern District of Florida.

UNION TRUST COMPANY

vs.

TRUSTEES INTERNAL IMPROVEMENT FUND OF FLORIDA *et al.*

It is hereby agreed by and between C. P. & J. C. Cooper, representing the complainants, and Fleming and Daniel, representing Trustees I. I. Fund, defendants, that the appeal bond may be approved, and that complainants will not prosecute appeal until bonds

sued on are filed in U. S. circuit court, northern district of Florida, with Philip Walter, clerk.

October 8th, 1885.

C. P. & J. C. COOPER,
Complainant's Sol's.
FLEMING & DANIEL,
Sol's for Defendants.

[Endorsed:] In circuit court U. S., northern district of Florida. Union Trust Company *vs.* The Trustees I. I. Fund *et al.* Agreement as to appeal. Filed October 9th, 1885. Philip Walter, clerk.

529 Know all men by these presents that the Union Trust Company, a corporation under the laws of the State of New York, as principal, and F. W. Brooks, of the city of New York, and Geo. A. Everett, of the city of New York, as sureties, are held and firmly bound unto the Southern Inland Navigation and Improvement Company, a corporation existing under the laws of the State of Florida, and the trustees of the internal improvement fund of Florida, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said Southern Inland Navigation and Improvement Company and the trustees of the internal improvement fund of Florida, their successors or assigns; for which payment, well and truly to be made, the said principal corporation, through its officers, and we, as sureties, bind the said principal and its successors and ourselves as such sureties, our heirs, administrators, and executors, firmly by these presents.

Sealed with the seal of said corporation and our seals. Dated the 21st day of September, A. D. 1885.

Whereas a decree was rendered on the 10th day of April, A. D. 1885, in the United States circuit court for the northern district of Florida, 5th judicial circuit, dismissing the bill with costs against complainant in a cause in that court then pending, wherein the said Union Trust Company of the State of New York was complainant and the said Southern Inland Navigation and Improvement Company of the State of Florida and the Trustees of the Internal Improvement Fund of Florida were defendants; and whereas
530 the said Union Trust Company, deeming itself aggrieved by the said decree, has appealed from said decree to the Supreme Court of the United States:

Now, therefore, the condition of the above obligation is such that if the above-named appellant, The Union Trust Company, shall diligently prosecute said appeal and if the said decree is affirmed or said appeal is dismissed by said Supreme Court shall pay all costs then due in said cause, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.]

UNION TRUST COMPANY
OF NEW YORK,
By JNO. OGILVIE, *J. P.*
F. W. BROOKS. [SEAL.]
GEO. A. EVERETT. [SEAL.]

Attest: A. W. RONALDSON, *Secretary.*

STATE OF NEW YORK, } ss:
City and County of New York, }

Frank W. Brooks, one of the subscribers to the foregoing bond, being duly sworn, says that he is a resident and householder within this State and is worth double the sum specified by him in the foregoing bond over all his debts and liabilities and exclusive of property exempt by law from execution.

F. W. BROOKS.

Sworn to before me this 22nd day of September, 1885.

FREDERICK R. ORR,
Notary Public, Kings County.

Certificate filed in New York county.

531 STATE OF NEW YORK, } ss:
City and County of New York, }

Geo. A. Everett, one of the subscribers to the foregoing bond, being duly sworn, says that he is a resident and householder within this State and is worth double the sum specified by him in the foregoing bond over all his debts and liabilities and exclusive of property exempt by law from execution.

GEO. A. EVERETT.

Sworn to before me this 22nd day of September, 1885.

FREDERICK R. ORR,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

STATE OF NEW YORK, } ss:
And County of New York, }

I certify that on this 22nd day of September, 1885, before me personally appeared the above-named F. W. Brooks and George A. Everett, to me known and known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

FREDERICK R. ORR,
Notary Public, Kings County.

Certificate filed in New York Co.

[Endorsed:] In the U. S. circuit court, northern district of Florida. The Union Trust Company *vs.* Southern Inland Navigation and Improvement Company and Trustees I. I. Fund of Florida. Appeal bond for costs. Approved Oct. 9, 1885. Thomas Settle, judge. Filed Oct. 10, 1885. Philip Walter, clerk.

532 UNION TRUST COMPANY OF NEW YORK

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES OF I. I. FUND OF FLORIDA.

I, Philip Walter, clerk of the United States circuit for the 5th judicial circuit and northern district of Florida, do hereby certify that the foregoing transcript, paged from one to 531, is a true, full, and complete record of all the proceedings had and of the decree rendered in the above-entitled cause, on the 10th day of April, 1885, in favor of defendants, and that on the 10th day of April, 1885, the Union Trust Company of New York prayed an appeal to the Supreme Court of the United States from said decree, which was allowed.

In testimony whereof I hereunto subscribe my name and affix the seal of said said circuit court, at Jacksonville, this 12th day of October, A. D. 1885.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

PHILIP WALTER,

Clerk Circuit Court of the U. S., Northern District of Florida.

Endorsed on cover: N. Florida C. C. U. S. No. 466. The Union Trust Company of New York, appellant, *vs.* The Southern Inland Navigation & Improvement Company and The Trustees of the Internal Improvement Fund of the State of Florida. Filed October 30, 1885.

IN SUPREME COURT OF UNITED STATES OF AMERICA.

UNION TRUST COMPANY OF NEW YORK, Appellant,

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

It is hereby stipulated and agreed by and between William Fullerton and C. P. & J. C. Cooper, solicitors for appellant, and Wayne McVeagh, Esq'r., solicitor for appellees, The Trustees of the Internal Improvement Fund of Florida, that the certified copy of the decree in the case of Charles Greenough, as administrator, etc., of Francis Vose *et al. vs.* Trustees of the Internal Improvement Fund of the State of Florida *et al.*, dated December 11th, 1883, hereto annexed (upon the certificate of the clerk of the United States circuit court for the northern district of Florida, also hereto annexed), shall be treated and considered as a part of the record in the case of Union Trust Company of New York *vs.* Southern Inland Navigation and Improvement Company and Trustees of the Internal Improvement Fund of Florida, now in Supreme Court of United States of America, in all respects as if the same had been duly incorporated in the record in said case filed in said Supreme Court on the 30th of October, 1885, and of file in said Court.

WILLIAM FULLERTON,
C. P. & J. C. COOPER,
Solicitors for Appellant.
WAYNE MACVEAGH,
Solicitor for Trus. I. I. F. of Fla.

In the Circuit Court of the United States, Fifth Circuit & Northern District of Florida. In Equity.

CHARLES P. GREENOUGH, as Administrator, &c., of Francis Vose *et al.*,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLA. *et als.*

This cause coming on to be further heard, it is, on motion of The Trustees of the Internal Improvement Fund, defendants herein, no one objecting thereto, ordered, adjudged, and decreed as follows:

1st. That the injunctions heretofore granted herein against the trustees of said fund be and are vacated as to all further proceedings and actions of the trustees in the administration of said fund.

2nd. That the receiver and master herein, Aristides Doggett, Esq., be and is discharged as such master and receiver from further action in the premises, and he is hereby directed to deliver to the trustees of said fund, on the receipt of their treasurer, all bonds and other assets of said fund held by him as such receiver or master, in-

cluding those of any "sinking fund," and that he file his final accounts as such without delay for the action of this court thereon.

3rd. That this cause stand dismissed as to all pending and future proceedings of creditors of and claimants or other persons against said fund, except that all pending petitions as to or on coupons, including that of Francis —— *et al.*, trustees, and the petition of Samuel A. Swann for compensation, may proceed to a final hearing and disposition herein: Provided, however, also, That nothing herein shall preclude the right of any holder or holders of bonds of the Tallahassee Railroad Company to file a petition herein claiming that the said trust fund is liable for the payment of the principal of the said bonds and interest accruing or to accrue thereon, for the settlement of the liability of said fund, in respect of said bonds or the interest accruing or to accrue thereon, and the duties of said trustees as to said bonds and interest: And provided further, That this court may settle the claim of said master and receiver as such for any compensation that may be due him.

Adjudged and decreed in open court this 11th day of December, A. D. 1883.

THOMAS SETTLE, *Judge.*

Endorsement: Decree of Dec. 11th, 1883, dissolving injunction, &c. Filed Dec. 11th, 1883. Philip Walter, clerk.

I, Philip Walter, clerk of the U. S. courts, 5th circuit, northern district of Florida, do hereby certify that the foregoing is a true and correct copy of its original now on file and of record in my office.

In witness whereof I hereunto set my hand and official seal, at the city of Jacksonville, in the district and circuit aforesaid, this the 5th day of January, A. D. 1889, and of the Independence of the U. S. the 113th year.

[Seal U. S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.]

PHILIP WALTER, *Clerk.*

In U. S. Circuit Court, Northern District of Florida.

CHAS. P. GREENOUGH, Adm'r,

vs.

TRUSTEES INTERNAL IMP. FUND OF FLA.

In Matter of Petition of WILLIAM H. GLEASON, H. C. HEPBURN intervening.

UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO.; TRUSTEES OF IMP. FUND OF FLORIDA.

It is agreed by the solicitors representing the parties in above-styled suits that all testimony taken in said suits may be used as testimony in each of said suits as if taken in each, and that such portions of the record of the case of Francis Vose *vs.* Trustees I. I.

Fund of Florida as refer to the matters involved in above causes and are admissible as testimony may be used and read as testimony at the hearing of said above-named causes.

ED. M. CHENEY,
Sol. for Wm. H. Gleason and S. I. N. & Imp. Co.
FLEMING & DANIEL,
Sol's for Trustees of I. I. F. of Fla.
W. FULLERTON,
C. P. & J. C. COOPER,
Sol's for Union Trust Co. and H. C. Hepburn.

Endorsement: Agreement to use testimony in each case. Filed Dec. 24th, 1884. Philip Walter, clerk.

In United States Circuit Court, Northern District of Florida.

THE UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND NAVIGATION COMPANY and TRUSTEES OF INTERNAL IMPROVEMENT FUND OF FLORIDA.

I hereby certify that the decree in the case of Charles Greenough, administrator of Francis Vose, *vs.* Trustees of Internal Improvement Fund of Florida, dated the 11th day of December, A. D. 1883, a true copy of which is hereto annexed, is a part of the record in said cause, and was used in evidence as a part of said record in the above-entitled cause of Union Trust Company *vs.* The Southern Inland Navigation Company and Trustees of the Internal Improvement Fund of Florida at the hearing thereof, under the agreement contained in said cause as to using in evidence the record in said Vose case, a copy of which agreement is also hereto annexed; and I further certify that said decree was omitted from the copy of record in said cause of Union Trust Company *vs.* Southern Inland Navigation Company *et al.*, now in United States Supreme Court, by mere inadvertence, and properly forms a part of said record.

In witness whereof I have hereunto set my hand and seal of said U. S. circuit court for northern district of Florida this 7th day of January, A. D. 1889.

[Seal U. S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.]

PHILIP WALTER, *Clerk.*

[Endorsed:] Supreme Court U. S. 1888, Oct'r term. No. 191. The Union Trust Company of N. Y., app't, *vs.* The Southern Inland Navigation & Improvement Co. Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 21, 1889. James H. McKenney, clerk.

FILED
NOV 5 1908
JAMES H. McKENNEY,
CLERK

IN SUPREME COURT OF THE UNITED STATES.

THE UNION TRUST COMPANY OF NEW YORK,

against

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY, AND THE TRUSTEES OF INTERNAL IMPROVEMENT FUND OF FLORIDA.

BRIEF OF APPELLANT'S SOLICITORS.

WILLIAM FULLERTON,
~~C. P. &~~ J. C. COOPER,
Solicitors for Appellants.

IN SUPREME COURT OF UNITED STATES.

THE UNION TRUST COMPANY OF NEW YORK,

against

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY, AND THE TRUSTEES OF INTERNAL IMPROVEMENT FUND OF STATE OF FLORIDA.

1 **Statement of Case.**

This is an appeal from a decree of the U. S. Circuit Court for Northern District of Florida, dated April 10th, 1885, dismissing the bill in this cause.

The action is a bill in equity, filed on the 12th of April, A. D. 1883, by the complainant, The Union Trust Company of New York, against the defendants, The Southern Inland Navigation and Improvement Company and Trustees of the Internal Improvement Fund of State of Florida, and the purpose of the bill is to enforce a trust deed or mortgage executed by said defendant, "The Southern Inland Navigation and Improvement Company," to the complainant to secure its first mortgage bonds.

The bill was filed at the instance of Henry C. Hepburn, the owner and holder of fifty of said bonds, and the prayer of the bill is for a sale of the lands and property described in the mortgage, to pay these and all bonds secured by said mortgage actually issued and outstanding, on account of non-payment of interest and Sinking Fund by said defendant company, and total failure to perform any of the conditions of said mortgage.

The defendant company, The Southern Inland Navigation and Improvement Company, is a corporation organized under Acts of Legislature of the State of Florida; Acts of 1868 and 1869, Chapters 1644 and 1706, as follows:

CHAPTER 1644.

2 ACTS 1868.

"An Act to organize The Southern Inland Navigation and Im-"provement Company."

Whereas, The interests of the State will be greatly promoted by encouraging a system of Inland Navigation and Communication, so that the interior portions of the Peninsula of Florida and the Indian River country may find a cheap and easy outlet for their

surplus products, and thus induce immigration to that now neglected portion of the State: Therefore,

SECTION 1. The people of the State of Florida, represented in the Senate and Assembly, do enact as follows:

That S. W. Nelson, Charles L. Mather, W. H. Hunt, Herbert Reed, Robert Erwin, M. H. Alburger, Thomas W. Osborn, William W. Ross, and W. H. Gleason and such other persons as may become associated with them by becoming stockholders in said corporation, their successors and assigns, shall forever be a body corporate and politic by the name of "The Southern Inland Navigation and Improvement Company," and by such name shall be capable in law to buy, sell, purchase, hold and convey, and have conveyed thereto, any personal, real, or mixed property or estate, to receive donations of land or other property, to build and construct wharves, steamboats or other vessels, and to navigate the same, to contract and be contracted with, to issue bills of lading, and of such evidences of debt as they may find necessary for carrying into effect the full intentions of this Act, to mortgage the whole or a part of their real estate and franchises, to sue and be sued, to plead and be impleaded, defend and be defended, in all Courts of law or equity in this State, orin the United States, to have a common seal and alter and renew the same at pleasure, to regulate the manner in which shares may be subscribed and transferred in said corporation, to make rules, regulations and by-laws for the government thereof, and do all
3 lawful acts incident to a corporation, which may be necessary and proper for the convenient management of its affairs.

SECTION 2. Be it further enacted: That the said company shall annually hold an election, at such times and places, and under such regulations and restrictions, as they in their by-laws may prescribe, for as many directors, to be previously determined on and declared in their by-laws, and the directors when elected shall elect a president and such subordinate officers and agents as may be deemed necessary, and at any time dismiss them from office, and the said Board of Directors shall be capable of exercising such other powers and authorities for the well governing and ordering the affairs of the company as to them shall appear conducive to their interests. A majority of the Board of Directors shall constitute a quorum, and until an election shall be held, the persons named in the first section of this Act shall constitute the Board of Directors.

SECTION 3. Be it further enacted: That the capital stock of said company shall be two hundred and fifty thousand dollars, to be divided into shares of one hundred dollars each, and the
4 same may be increased from time to time, as the Board of Directors may deem expedient.

SECTION 4. Be it further enacted: That in all elections for directors, the shareholders may vote in person or by proxy, and shall be entitled to a vote for each and every share, and in case of a vacancy in

the Board of Directors, such vacancy may be filled by the remaining members of the Board of Directors.

SECTION 5. Be it further enacted: That the said company or corporation shall have the right of connecting the waters of Key Biscayne Bay by the way of the different inlets, Lake Worth, Indian River, Mosquito Lagoon, and Halifax River with the St. Johns River or its tributaries, by canals, and to dredge out the inside passage from Key West to Key Biscayne Bay, and the inside passage from the St. Johns River to St. Marys River, so as to make a steamboat navigation inside from Key West to Fernandina. And to effect the said object, the said company shall have the right to improve any of the said rivers, inlets or lagoons, by dredging, canalling, or making cut-offs, and to construct any locks, dams or embankments, and to erect such other work or works, as they may deem necessary for making, repairing, or keeping in repair any of such works, which may be necessary to complete and perfect such inland navigation.

SECTION 6. Be it further enacted: That it shall be lawful for the President and Directors of said company, or their properly authorized agents, to enter upon any land or lands, public or private, for the purpose of cutting any canal, or to take from any land most convenient to their works, any timber, stone, earth, or other materials which may be necessary for the construction of, and the keeping in repair said works and improvements.

SECTION 7. Be it further enacted: That whenever the said company shall take possession of, and use any lands, timber, stone or other material, owned by private individuals, for the route and site of said works, or for the construction and keeping in repair the same or any part thereof, and the parties cannot agree upon the value of the damages sustained, it shall and may be lawful for the President and Directors of said company, or their lawfully authorized agents, to apply to the Circuit Judge of the Circuit Court of the County in which such lands, stone, timber or other materials lie, for a writ *ad quod damnum*, directed to the sheriff, or other officer qualified, to summon five disinterested persons, who are jurors, to meet and value the said property upon oath, to be administered to them by any person capable of administering an oath, who shall take into consideration the damages sustained, as well as the benefits to be derived from said works or improvements, and true appraisal make of said damages and file same with the County Clerk, and upon the owners thereof making a release thereof to the said company, and filing the same in the County Clerk's office, the said company shall pay the damages as so assessed within sixty days after having been notified by the Clerk of the Circuit Court that the release is properly executed and filed in his office, and shall pay the same to the County Clerk for the use of the claimants, and the company shall pay all expenses incurred in issuing

said writ, and the appraisers shall receive two dollars a day while engaged in such duty.

SECTION 8. Be it further enacted: That there is hereby granted to the said company, by and with the consent of the Board of Trustees of the Internal Improvement Fund of Florida, the right of way through all lands owned by the State, and the title to lands for four hundred feet on each side, on any of the canals cut, or streams improved, *as well as all lands that may be given to the State of Florida by the Government of the United States, to aid in any of the improvements contemplated by this Act, and the Board of Trustees of the Internal Improvement Fund are authorized to make such concessions of land to the said company, to aid in the completion of said improvements, as they may deem for the best interests of the State.*

SECTION 9. Be it further enacted: That the President and directors of said company shall be authorized to agree upon such rate of tolls for the use of such navigation as they may deem reasonable, and as shall be approved by the Board of Trustees of the Internal Improvement Fund; and the said company may collect tolls on all vessels or other water craft, which may pass or repass through any canal which said corporation may cut or construct, or that may pass or repass through any channel they may have dredged or deepened, and said company shall be entitled to demand and receive said tolls upon all produce, merchandise, goods or other articles, which may be transported through any of the canals cut or waters improved by the said company; and all produce, goods, merchandise, boats, or other articles or things which may be transported or conveyed through any of said canals constructed or waters made navigable, shall be liable for the tolls and fees for which they are respectively chargeable, and may be detained until the same be paid and acquitted.

SECTION 10. Be it further enacted: That the said company shall pay a tax of five per cent. to the state upon all dividends made by said corporation to the stockholders thereof, which shall be in lieu of all taxes whatever; and as a bonus for the privileges herein granted, the state, upon the completion of said work, may purchase the said canals or improvements of the company at any time within ten years thereafter, by paying to the said corporation the cost of construction, and ten per cent. interest per annum upon the cost thereof.

CHAPTER 1706.

8 ACTS OF LEGISLATURE OF FLORIDA, 1869.

"A bill to amend an Act approved July 28, 1868, entitled 'An Act to Organize the Southern Inland Navigation and Improvement Company."

The People of the State of Florida, represented in Senate and Assembly, do enact as follows:

SECTION 1. That S. W. Nelson, Charles L. Mather, William H. Hunt. Herbert Reed. M. L. Doyle, N. H. Moragne, Thomas W. Osborn, William W. Ross, and W. H. Gleason, and such other persons as may become associated with them by becoming stockholders in said corporation, their successors and assigns, shall forever be a body corporate and politic by the name and style of "The Southern Inland Navigation and Improvement Company," and by such name shall be capable in law to buy, sell, purchase, hold and convey, and have cenveyed thereto, any personal, real or mixed property or estate, to receive donations of land or other property, to build and construct wharves, steamboats or other vessels, and to navigate the same, to contract and be contracted with, to issue bills of landing, and such evidences of debt as they may find necessary for carrying into effect the full intentions of this Act, to mortgage the whole or any part of their real estate and franchise, to sue and be sued, plead and be impleaded, defend and be defended, in all Courts of law and equity in this State and in the United States, to have a common seal and alter and renew the same at pleasure, to regulate the manner in which "shares may be subscribed and trans-
"ferred in said corporation, to make rules, regulations and
9 "by-laws for the government thereof, and do all lawful
"acts incident to a corporation which may be necessary "and proper for the convenient management of its affairs."

The Trustees of The Internal Improvement Fund of State of Florida, consist of the Governor of the State, Comptroller, Treasurer, Attorney-General and Commissioner of Lands and Immigration, and were created by Act of 6th of January, 1855, of Laws of Florida, copy of which is appended hereto so far as it applies to this case.

It will be seen by reference to this Act that Title to "The Internal Improvement Lands" and "Swamp and Overflowed Lands," granted by the United States to the State of Flordia, is vested by this Act in said Trustees, with certain duties and powers therein specified.

On the 10th day of February, A. D., 1871, the then Trustees of the Internal Improvement Fund of Florida, executed a deed to a large amount of said lands to the defendant, "The Southern Inland Navigation and Improvement Company", attached as Exhibit "A" to the Bill, and found from pages 6 to 38 in printed record.

To raise money and carry out the purposes of its creation, and of said grant of land, on 20th of March, 1871, said defendant Company executed to the complainant in this cause its trust deed or mortgage of said lands and its other property, to secure bonds which it proposed to issue and dispose of. The deed to the defendant Company and the mortgage were both duly recorded in the proper offices in the counties where the lands are situate, shortly after their execution. For copy trust deed or mortgage see pages 40 to 56 of printed record.

The defendant company through William H. Gleason, its President, duly authorized so to do, in 1875, borrowed from one W. H. Bennett 3000 pounds English money, and gave him the company's obligation therefor and deposited with him fifty of its first mortgage bonds as collateral to secure said loan, with power to dispose of said bonds and apply proceeds of sale to payment of said loan.

The amount so borrowed was not repaid to Bennett, and in 1882 he sold the bonds to Henry C. Hepburn, at whose instance this suit is prosecuted, and these are the fifty bonds mentioned in the bill. See printed record, pages 90 to 93.

The defendant company in its answer, and its President, W. H. Gleason, in his testimony, in substance admit these facts and do not resist the complainants' right to enforce the payment of these fifty bonds out of said mortgaged property. See deft's. answer, pages 76 and 77. Testimony of Gleason, pages 99 to 101, 112, 114 & 117 of record.

The only resistance to the granting of the relief prayed in complainant's bill is made by the Trustees of the Internal Improvement Fund of Florida, and their defences may be summed up in three propositions, to wit: That the Trustees who executed the deed of February 10th, 1871, to the defendant company, had no authority to execute such deed and in so doing exceeded their powers.

That the said deed was without consideration or for an invalid consideration. That in a suit pending in the U. S. Circuit Court for Northern District of Florida in which Francis Vose was complaint and said Trustees of Internal Improvement Fund, et al, were defendants, this deed to said defendant company of February 10th, 1871, from Trustees of Internal Improvement Fund of Florida was annulled, and is now of no force or effect.

That they, the said trustees have sold a part of said lands to pay off certain other liens thereon, and they still have part of them, *as alleged in complainant's bill.* See petition of Trustees of Internal Improvement Fund, pages 62 and 63 of record, also answer of said Trustees, pages 65 to 75 of printed record.

On some of these grounds, but on which of them does not appear in the record, the Court below dismissed complainant's bill, but we

insist that none of the defences, alleged or attempted to be proven, justified the decree of the Court below, denying relief prayed by complaint, or the dismissal of the bill, and we assign this decree as error. For decree see page 270 of printed record.

12 ARGUMENT.

The first few pages of the answer of the defendant trustees, from 66 to 70 in printed record, attempt to raise the defense of a want of power in their predecessors to execute the deed of February 10th, 1871, of the land involved in this suit to the defendant company, "The Southern Inland Navigation and Improvement Company", and in support of this idea, it is alleged that the canal, for the construction of which defendant was created, is not the canal mentioned in the act of 1855, creating said trustees and prescribing their powers and duties, but that in 1857 an act was passed providing for the construction of such a canal as was contemplated by the Internal Improvement Act of 1855; nothing however having been done under said act of 1857, towards constructing such canal, said act was repealed in 1862, and the lands donated in aid thereof were restored to said Trustees.

We fail to see in what sense any of these allegations affect the powers of the Trustees on 10th of February, 1871, to execute the deed that they did to the defendant company.

It is true that by the 4th Section of the Internal Improvement Act of 1855, a canal from St. Johns River to Indian River is mentioned as a proper subject of internal improvement to be aided out of said trust fund, and an examination of the acts incorporating said defendant company, "The Southern Inland Navigation & Improvement Company", also the proceedings of said Trustees, relative to said grant of land to the defendant company, shows that the canal which the defendant company was chartered and undertook to construct, included and covered the route from St. Johns River to Indian River, and was intended to go further north and south than those points.

13 See Acts of 1868 and 1869, incorporating "The Southern Inland Navigation and Improvement Company" heretofore recited.

See pages 140 and 141 of printed record.

But even if these were entirely different canals, the legislature of the State of Florida had power to declare it a proper subject of improvement out of this trust fund, and to authorize the Trustees of this Internal Improvement fund to convey lands to this defendant. This the legislature did by Section 8 of Act of 1868, Chapter 1644, above recited.

The legislature did not entirely lose its control over this public domain by passing this act of 1855, creating these Trustees; it could at any time add to the list of beneficiaries of the act of 1855, provided it did not conflict with any already vested rights.

See case St. Johns R. Co., vs. Trustees, &c., 16 Fla. Reps., page 545, construing this act.

Again the Act of 1855 leaves the sale of lands, and the methods and manner in which these Trustees should attain the principal end of *draining* and *reclaiming* this land and improving the trust lands entirely to the Trustees.

See Sections 2 and 16 of Act 1855.

This canal of "The Southern Inland Navigation and Improvement Company" was a scheme for draining and improving a wild, uninhabited country, as will be seen by reference to proceedings of the Trustees, pages 140, 141 and 142 of this printed record, and on those grounds the Trustees had power to convey to the defendant land to aid their enterprise, and no one could complain except some *prior* creditor of the fund, and not succeeding Trustees, as is attempted in this suit.

See Trustees, &c., vs. Gleason, 15 Fla. Reps., 398, also
14 Trustees, &c., vs. St. Johns Railway Co., 16th Fla. 545; also Daniels vs. Tearney, 12 Otto, 415-422.

The Trustees in February, 1871, were justified in making this deed by the Acts of 1868 and 1869, incorporating this company, and the title of the defendant company to this land arises from this legislative grant as much as it does from the deed of February 10th, 1871.

See Section 8 of Act 1868, Chap. 1644.

This was not purely a donation by the Trustees to this defendant company, the company was to pay and did pay $25 a section for the land, which sum was estimated to be the amount of other liens or claims due on this land, and the terms of sale were by the Act of 1855, left to the Trustees.

See page 142 of record; Gleason's testimony page 150 of
15 record.

Receipts from Treasurer of Board, page 75 of record.

As to the defence of the consideration paid by defendant company, what we have said above applies directly, but the question as to whether there was or was not a consideration for this deed can not affect complainant's rights.

The predecessors of the present Trustees executed the deed to the defendant company, and thereby put it into the power of said company to incumber the lands and raise credit upon them, and

their succeesors in the trust will not be permitted in a suit by creditors holding, liens (on this land) created by the defendant company to raise the question of consideration or no consideration, that question might arise in a suit between the defendant company and the Trustees, but cannot in this suit.

16 See 12 Otto Reps., 415 and 422.
" 6 " " 267.

W. H. Bennett to whom the defendant company transferred these fifty bonds on which this suit is based, took them in good faith, and as an innocent holder; he had no knowledge of any transactions between the company and the Trustees except the deed of record, but he used unusual caution at the time he made his loan, and accepted these bonds; he made inquiry as to the title of the company to these lands and certificates were delivered to him from all the registry offices in the counties where the lands were situated, showing the title free and unincumbered to these lands in the defendant company, also certificate under great seal of the State of Florida from the Governor of the State of Florida, President of the Board of Trustees of Internal Improvement Fund, and from the Commissioner of lands of the State and Secretary and Treasurer of the Board, all showing complete title to these lands in this company and the certificate of Secretary of State of the United States as to these officers and the credit that might be given them as such officials. This was an exercise of more than the prudence required of persons taking negotiable paper not yet due, such as these bonds, for value, and W. H. Bennett was in every sense an innocent holder for value of these securities. When the sale of the bonds was made to Henry C. Hepburn he used equal precaution and all of these certificates were delivered to him at the time of his purchase.

See testimony of W. H. Bennett and George A. Everett and certificates in printed record, pages 102 to 109 inclusive.

For amount of prudence required of persons taking bonds and securities and the protection afforded them see following authorities.

1 Wallace, 83.
17 6 Otto, 267.
4 Otto. 104.
3 Otto, 502.

We respectfully call the Courts attention to the fact, that there is not a word of proof in the record showing any fraud or the taking of an invalid consideration for the lands by the Trustees who executed the deed to the defendant Company; if this defense could be made against complainant, which we deny, we say it is not sustained or proven.

These certificates of title made by the Trustees of the Internal

Improvement Fund predecessors in office of these defendants, estop the defendants from denying the right of an innocent creditor who advanced money on the faith of these certificates, from collecting his money out of the security, title to which was by said certificates guaranteed and assured. Should we concede that the Trustees committed a wrong in executing the deed or that they received no consideration for it, or the lands had been restored to the fund for the benefit of creditors, this guarantee estops succeeding Trustees from resisting this just claim of a creditor who acted on said guarantee. As a general rule Trustees are bound by the acts of their predecessors in the trust. The exceptions are in cases of actual fraud between said Trustees and parties seeking relief, which frauds must be alleged in the pleadings and established by proof. The case of complainant here is not open to any such criticism.

See case of Partin vs. Stone, 1 McCreary 445. Story's Eq. Jur. Sec. 385, 13 Peters, 107, How., 172. 102 U. S., 68. 101 U. S., 494, and cases already cited.

18

Biglow on Estoppel, pages 561 to 567, and 337, 3 Woods, 678.

And this estoppel both by matter of deed, and *in pais*, binds these succeeding Trustees as privies in title and estate of their predecessors.

18 How. Reps. 85, 6 Peters, 611. Biglow on Estoppel 337.

These Trustees are bound by the acts of their predecessors, although they are public officers, for the State itself may be bound by estoppel.

11 Fed. Rep., 389.
5 " " 334.
2 Paine " 558.

The important question presented by the defense of the trustees in this case is as to the effect of the proceedings and decrees in the case of Francis Vose vs. The Trustees of Internal Improvement Fund, et al, referred to in their answer, and set out in the record in this cause, upon the rights of complainant herein, and those it represents. It is contended on the part of the Trustees that the deed from their predecessors to the defendant company, "The Southern Inland Navigation and Improvement Company", of February 10th, 1871, was executed pending a suit by Francis Vose vs. Trustees of Internal Improvement Fund, et al, to enforce the lein of certain coupons he held upon said lands, and the balance of said trust fund, and that in that suit by a decree of December 4th, 1873, this deed to said defendant company was cancelled, and therefor com-

plainant cannot enforce its trust deed made to it by "The Southern Inland Navigation and Improvement Company" of the
19 lands included in said deed from said Trustees of Internal Improvement Fund, to said defendant company.

See answer of Trustees, page 70 printed record. Copy of decree pages 250 to 252 inclusive, of record.

Proceedings in Vose case, from pages 151 to 254 of printed record.

In reply to this allegation we say that the complaintant was never made a party to the Vose litigation, and is in no measure affected by these Vose proceedings or said decree therein.

No one is bound by a decree except the parties to the suit, and those claiming under them, who acquire their rights *after the pleading on which the decree is based, is filed.* In this case the deed from the Trustees of the Internal Improvement Fund to Southern Inland Navigation and Improvement Company, was executed February 10th, 1871, and the trust deed from said company, to the complainant was executed on the 20th of March, 1871, and recorded shortly thereafter.

This trust deed to complainant is nowhere mentioned, and complainant is not mentioned in either the bill or any of the
20 petitions of Vose; and it is not shown that complainant or any one it represents had any notice of the Vose proceedings.

The original Vose bill contains but one allegation touching lands of Southern Inland Navigation and Improvement Company, and that is: That on *July 28th, 1868*, the trustees attempted by resolution to secure said company about 40,000 acres of land, but what land is not mentioned, *nor is any relief asked in that bill as to said company or said land.* See page 156 of record. And the land referred to in Vose's bill certainly is not the land included in the deed from Trustees to Southern Inland Navigation and Improvement Company, and in trust deed from said company to complainant, for the resolutions and proceedings of the trustees in reference to land conveyed by said deeds were passed February 13th, 1869; see page 140 of record. All of the proceedings of the trustees relative to the issues in this cause, were by consent made testimony; see page 126 of record; and no such resolution as that of July 28th, 1868, referred to in Vose's bill was ever filed, if any such was passed. If such resolution was ever adopted it referred to the 400 feet along the route of canal mentioned in the Acts incorporating defendant company. See Sec. 8 of Act 1868, Chap. 1644, also following authorities.

Miller vs. Sherry, 2 Wallace, 237. 5 Bissel, 367. 1

21 McLean, 321. 2 Pomeroy's Eq., sec. 634, and cases cited in notes.

The answer of the trustees alleges that some time in 1871 or 1872, proceedings were taken in the Vose suit to cancel this deed of March 20, 1871. We say no such proceedings were ever had or taken in that suit.

In April, 1871, after the 18th of said month, and after the trust deed to complainant had been executed and recorded, (for dates of record of said deed, see page 55 of record), Francis Vose filed his petition in said cause, *praying for a receiver, and for rule against the then trustees to show cause why they should not be punished for violation of an injunction in said cause*, and no relief whatever is prayed as to said defendant company; but as a mere inducement to the prayers for a Receiver, it is stated that prior to the filing of the bill, the Trustees had undertaken to convey a much larger quantity of land than in the bill mentioned for an inadequate consideration, but the sale was consummated after the injunction, by delivery of the deed to W. H. Gleason, agent of the company. This petition shows that Vose knew the deed had been executed, but he does not file any supplemental bill to cancel it, nor does he in the petition pray for any relief as to this deed.

For petition see page 175 of record.

And on April 22, 1872 said Vose filed another petition in said cause, reciting among other things that said Trustees had sold to "The Southern Inland Navigation and Improvement Company", or Gleason, 23,116.01 acres for $28,116.01, and received coupons in payment, and said Vose again prayed for a Receiver and for punish-

22 ment of Trustees for contempt; but *there is no relief prayed as to this company or the land deeded to it.*

Page 206 of record.

These are the only pleadings in the Vose case mentioning these sales to the defendant company, *and both of them subseguent to the trust deed to complainant, and complainant was not made a party thereto, nor any relief prayed as to it*, or the said trust deed to it.

The Vose bill did not create any notice or *lis pendens* as to complainant, because it does not describe or refer to the land covered by the deed to complainant, and because it seeks no relief as to said land, or the defendant company.

4 Johns Chan. Rep. 38, 9, Paige 315.

The bill to create a *lis pendens* and notice must describe the lands intended to be affected by it, and pray for relief as to same, and with such definiteness as to notify subsequent purchasers that the title of defendant to said lands is brought in question by that suit.

Bump on Fraudulent Conveyances, page 538.

Miller vs. Sherry, 2 Wallace, U. S. Sup. Ct. Reps. 237;
2 Pomeroy Eq., Sec. 634, 22 Ala. Reps. 743.

These petitions in reference to Conveyances to S. I. Nav. & I. Co., having been filed subsequent to deed to complainant, created no *lis pendens* as to the lands therein conveyed. *Lis pendens* exists only from time of filing the pleading, and issue of process thereon. This complainant was not made a party to the bill or the petitions, and hence any decree thereon could not affect its rights in said lands.

23 Bump on Fraudulent Conveyances, 538.
Miller vs. Sherry, 2 Wall, U. S. Sup. Ct., 237.

It is true the injunction issued in the Vose suit enjoined the Trustees from donating or disposing of the trust lands, except in accordance with the terms of the Act of 1855, or from selling them for aught else than the currency of the United States; but, as is well said in the answer of several of the then Trustees, the contracts of sale of this land had already been made and the purchase money received by the Trustees, *long before the injunction issued*; and although the formal execution of the deed was after the injunction, yet the sales having been closed and the purchase money received before the injunction; said injunction did not apply to this transaction, and the Trustees were bound to make the deed, and defendant company could have compelled the making of deed.

The American doctrine is well settled that where the purchase money has been paid before the suit is instituted in reference to the land, subject matter of such sale, the purchaser and his assigns are not affected by the suit, but are entitled to a deed without reference to such suits.

24 2 Pomeroy, Sec. 637 and cases cited. Also Benedict on Lis Pen dens pages 277 & 290

For sale of this land by Trustees, see pages 140 to 148 inclusive, of record. Receipt of purchase money, page 126 of record. Answers of Trustees, pages 212, 218 of record.

But this was not a mere sale of these lands by the Trustees; it was a grant by the State to this defendant company for drainage and improvement purposes, and this grant was simply carried out and confirmed by the Trustees by making their deed. And the Legislature, having authorized it, and the concession having been made before the injunction issued, the deed was not a violation of the injunction.

Date of injunction was December 6th, 1870; date of concession of land, February 13th, 1869, and order for deed made February 2nd, 1870; and finally ordered September 19th, 1870.

Even if the making of this deed be considered in violation of the injunction, can these succeeding trustees plead that, as avoiding the deed in a suit by a creditor who has given credit on the faith of the

deed? The position of these Trustee is very different from that of Vose. He was himself a creditor who asserted certain conveyances of the trust fund, were in fraud of his rights. These Trustees are successors in title of the persons who made the deed, complained of, so that complainant cannot be affected by that attempted defense, and these defendants cannot raise it. This deed was not treated by the Court, in that cause as a contempt, for the Trustees were never punished in any manner for such contempt in making the deed; the only order on either petition was to appoint a receiver.

25 See pages 254 and 255 of record.

A purchaser *pendente lite* from a defendant is only affected by so much of the suit as touches the rights of the plaintiff; the suit is not notice of the rights of another defendant.

2 Pomeroy's Eq., Sec. 638.

We come now to consider the decree itself which the defendant Trustees contend cancelled this deed from Trustees to defendant company. This decree is dated December 4th, 1873, and the portion of which it is alleged has the effect of cancelling this title is as follows:

"It is further ordered, adjudged and decreed that the *contracts or "agreements* entered into by the trustees of the I. I. Fund, with the "corporation known as the Southern Inland Navigation and Im- "provement Company be rescinded, and the same are hereby declar- "ed to be null and void, and the lands undertaken to be conveyed or "contracted to be conveyed, shall be restored to the said Internal "Improvement Fund and be subjected to sale by the agents appoint- "ed by decree of this Court, rendered during the term, in accord- "ance with the provisions of said decree."

This decree only cancels such contracts or agreements as then existed between the said company and the Trustees, and only affects lands *to be* conveyed. It has no reference to an executed deed or to lands already conveyed, and as we shall show from the record, was never intended to affect this deed to defendant company, or the lands therein conveyed.

At the time this decree was made, the Trustees were under contract to convey to the defendant company several hundred thousand acres more of other and additional lands not included in their deed of February 10th, 1871 to said company. For this contract and description of the land still remaining *to be* conveyed, see proceedings of the Trustees, of March 30th, 1871, page 147 of printed record, and testimony of W. H. Gleason, President of said
26 company, on page 100 of record.

The Court was informed of this contract and these lands yet to be conveyed, because by its decree, dated December 7th, 1871, found on page 241 of record, it ordered its master to inquire and state to

the Court "All agreements or contracts which may have been entered into by the said Trustees, and if originally executory, how far executed," &c. Also the amount of land already conveyed, &c., see pages 241, 242 and 243 of record; and the Trustees are ordered to produce before him all deeds, books, papers and writings in their possession, showing the facts to be inquired about.

Further, the Court recognizes and confirms the distinction between lands *conveyed and contracted to be conveyed to this company*, and excepts them from a sale ordered made of the remaining trust lands, by its decree of December 16th, 1871, page 245 of record.

Mr. Vose, in his petition of April 18th, 1871, also uses the language "*undertaken to convey*" as meaning lands not yet conveyed, but *to be* conveyed, in referring to this very deed to the defendant company, when he says, "Prior to the filing of his bill, &c., the "Trustees had *undertaken* to convey to the company", &c., but sale was not consummated until after, &c., and not perfected by delivery of the title deed to Gleason, Manager of Company until within a month, &c. See page 175 of record.

There has been no pleading filed by Vose praying for a cancellation of this deed, and the Court certainly would not have made a decree granting relief without any pleading upon which to base same, or any prayer for same.

27 4 Sawyer, 424.

While it was adjudged that defendant company had been made a party to that suit, and *pro confesso* entered against it, yet even where a *pro confesso* has been entered against a defendant, the decree must follow the allegations and prayers of the bill. There were no allegations or prayers in the Vose bill in reference to this deed or the land therein conveyed, or to the company, hence the Court could not have intended this decree to refer to that deed.

This view is supported by the fact that another company, the N. Y. & Florida Land, Lumber & I. Co., are alleged in same bill to have concessions from the Trustees of a large amount of land, and said company is prayed to be enjoined from further action under their contracts and agreements with Trustees and from locating, selecting or selling the lands, and this is all contained in the injunction issued on the bill.

Further, when the Court cancelled the deed to this Florida Land, Lumber & I. Co., it ordered the land reconveyed by that company to the Trustees, and this it would have done in case of deed to this defendant company if it had intended by the decree of December 4th, 1873, to cancel the title of company to lands already deeded to it.

For Vose bill on this point see pages 156 and 166 of record.

Also see pages 247 and 248 of record showing reconveyance by Florida L., L. & I. Co., to Trustees.

The form of a decree of cancellation of a deed in suit in equity is common. It is, to deliver up the deed for cancellation, to decree a re-conveyance of the land and to enjoin assertion of title by defendant under the deed. None of these things are decreed or ordered in this decree of December 4th, 1873.

28 For form of decree see Daniels, Chany. Prac.

As a decree of cancellation of this deed could not have been made on these petitions of Vose referring to same, a supplemental bill was required. Only some interlocutory order can be made on a petition, not relief final in its nature, as the cancellation of a deed.

Again, the *pro confesso* having been taken against the company *before* the filing of the *petitions in reference to this deed*, of course new process would have to issue to the defendant company before any decree could be made on this new case made by the petitions.

See case Trustees I. I. Fund vs. J. P. & W. R. R. Co. et al. 16 Fla., Reps. 730.

Hence, the Court, being learned in the practice of a Court of Equity, cannot be held to have intended to grant relief that it had no power under the pleadings to grant.

A true construction of the words "contracts and agreements" and "undertaken or contracted to be conveyed" certainly does not justify or warrant the idea of the defendant Trustees in this suit, that this decree of December 4th, 1873, in Vose case destroyed this title and all of complainant's rights in the premises. Those are words of ordinary use, with accepted meanings, and refer to matters still executory, not perfected by deed executed.

The next view of this case to be examined is as to the effect of the decree of December 4th, 1873, and the deed from the Trustees to defendant company upon the balance of the lands described in that deed, still left in possession of the Trustees after pay-
28 ment of Vose and the other creditors who enforced their liens in the Vose suit.

The bill in this suit alleges that the Trustees have sold upwards of 100,000 acres of this land, and the Trustees, in their petition for leave to answer, see pages 62 and 63 of record, say "That by said "decree the lands covered by said deed were restored to the posses- "sion of these petitioners, and they still have part of them, as "alleged in said bill of complaint. They have sold a part thereof "as directed by said decrees, to pay off the lien and indebtedness "against said fund held by said Vose as well as other persons in "the shape of coupons of railroad bonds, which were under the pro- "visions of the Internal Improvement Act of Florida, a first and

"preferred lien on said lands in year 1876," and by their answer said Trustees state, on page 72 of record that they have "sold and "conveyed parts of said land to divers persons," &c., and reserve the right to show to whom, &c.

It is clear that by far the largest portion of this land was in the possession of these Trustees at time of commencement of this suit.

If the decree of December 4th, 1873, did have the effect of cancelling and annulling the deed of February 10th, 1871, to the defendant company (which we deny) yet it only had that effect for the benefit of and at the suit of a creditor injured thereby, and as soon as he was satisfied, any balance of the land remaining would go back to the grantee subject to the liens put upon it by the grantee, certainly would become, in the hands of the Trustees (if it did not return to the grantee, the company) subject to the claims of any innocent creditors who had advanced the company credit
29 on the faith of this deed from said Trustees' predecessors in the trust, to said company.

This decree was made at the instance of and for the benefit of creditors only. The Trustees were co-defendants of the defendant company (the S. I. Nav. & I. Co.) in that Vose suit, and insisted that the conveyance to said company, was in all respects valid and in accordance with the Act of 1855 creating the trust. Shall the present Trustees, now be permitted to hold a part of the land therein conveyed against the claims of creditors of the company?

For answer of Trustees as to deed, see pages 194, 218 and 206 and 226 of record.

The creditors asserting their claims in the Vose suit have been paid and that litigation ended and a decree made dismissing that suit, and the principle is well established that "Although they (the courts) decree the deed void as to creditors, yet if if their debts are paid the decree is satisfied, and it is no longer of any effect."

Bump on Fraudulent Con. 551, Ransom vs. Fox, 65 Ill. Reps., 200 also Benedict Lis Pen dens 234

And "the surplus which may remain after the payment of the debt and costs belongs to the grantee," in the deed so decreed to be cancelled.

See Bump on Fraudulent Conveyances, pages 600 and 621, and notes at bottom of page.

30 40 N. Y., 383, 102 Mass., 262.
38 Barb. 302, 49 Ala., 275.

The balance of this land in hands of said Trustees, after satisfaction of Vose decree, is now subject to complainant's rights. Even a fraudulent conveyance, made without consideration, is void only as to creditors, and is good between the parties.

The statute of frauds and the principles of equity that treat as void

a conveyance in derogation of the rights of creditors, was designed solely for protection of creditors, and consequently renders such conveyance void only as against creditors,

See Bump on Fraudulent conveyances, page 436.

If the Court below held that complainant was bound by this decree and proceedings in Vose suit, and that the effect of that decree was to cancel the deed to defendant company at the suit of Vose, then said Court should have directed a reference to ascertain whether or not the Vose decree had been satisfied, and what portion of the lands included in said deed were still remaining in possession of the Trustees undisposed of, after satisfaction of Vose decree, and should have decreed that those lands were chargeable with the liens of the bonds *bona fide* issued, represented by complainant.

It is alleged in Trustees' answer that they have the original deed from Trustees to S. I. Nav. & I. Co., delivered up in their office. This is a mistake; the deed in their office is a duplicate or copy.

31 See certificate of their then Secretary Adams, page 38 of record; also testimony of Gleason, President of Company, pages 100 and 101 of record, where he produces *original* of deed from custody of company, and files it as exhibit in this case. Also note of this original deed put in evidence, page 255 of record.

It is plain from the testimony in this case that the fifty bonds held by Hepburn, issued to Bennett, are the only bonds of this Southern Inland Navigation and Improvement Company, ever *actually issued* for value.

There were 5,000 bonds printed; 2,000 of them were sent by complainant on order of the company to the City Bank of Londo ; these bonds were delivered on order and contract of company to Edward J. Reed, save the fifty hypothecated with Bennett, and they still remain in Reed's hands.

The American Contracting Company, mentioned in defendant company's answer, did some work on company's canal; (see page 116 of record), and unless they forfeited their rights, would have been entitled *not to bonds*, but to *proceeds* of sale of bonds, when sold, enough to pay them for what work they did (see page 145 of record,) but no bonds were *issued* to this American Contracting Company, as the evidence shows; but, of course, all this would be sub-
32 ject for investigation before a Master when the equities are settled between complainant and defendant Trustees.

See pages 88, 90, 91, 92, 93, 94, 95; 110, 112, 117, 127 128, of record; also contract with Reed, page 266 of record.

There is one feature in this case that strongly appeals to the favorable consideration of this Court, the title of Bennett was acquired after a careful inquiry on his part as to the validity of these bonds, and of the title of this company to these lands, which inquiry resulted in the exhibition to him of certificates from all proper officers State and County, showing title in said company to said lands, said certificates being issued with the design to effect the sale of these bonds, and by the very parties, (in the eye of the law,) who now seek to defeat the attaining of the relief sought in this cause by complainant as Trustee of said Bennett and his assign of said bonds.

The complainant therefore asks the application of the rule that a party shall not take advantage of his own wrong. The attitude of the defendant Trustees therefore in this case is this, that having clothed Gleason, president of defendant company, with power to go abroad and effect this loan, and having supplied him with instrumentalities that did induce this loan, now, the defendant company, having received the money upon the loan, said Trustees seek to repudiate the whole transaction. Assuming that the positions taken in this suit by the defendant Trustees are maintainable as between them and the defendant company, those positions cannot be successly taken and insisted upon in this suit of a creditor
33 who has advanced and invested his money on the faith of the very title and certificates thereof made by said Trustees themselves.

This disposes of every question of importance in the case, and we submit that the Court below erred in dismissing complainant's bill, and the decree so dismissing it should be reversed and complainant held to be entitled to the relief prayed in its bill.

~~C. P. &~~ J. C. COOPER,
WILLIAM FULLERTON,
Sols. for Appellants.

PORTIONS OF

An Act to provide for, and encourage a liberal system of Internal Improvement, in this State. Chapter 610, Laws of Florida, Acts of 1855.

WHEREAS, The Constitution of this State declares, "that a liberal system of Internal Improvements being essential to the development of the resources of the country, shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as practicable to ascertain by law, proper objects of improvements in relation to the roads, canals and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements," therefore,

SEC. 1. Be it enacted by the Senate and House of Representatives of the State of Florida, in General Assembly convened:

So much of the five hundred thousand acres of land granted to this State for Internal Improvement purposes, by an Act of Congress passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such of said lands heretofore sold as *now* remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sale of said lands; and also all the swamp land or lands subject to overflow, granted to this State by an Act of Congress approved September 28th, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the State from the sale of said lands, are hereby set apart, and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of the Act.

SEC. 2. Be it further enacted, that for the purpose of assurring a proper application of said fund for the purposes herein declared, said lands, and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five trustees, to wit: in the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the *power to sell and transfer said lands to the purchasers, and receive payment for same*, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the Internal Improvement Bonds issued under the provisions of this Act, and drawing not less than six per cent. annual interest; also the surplus interest accruing from such investment and to pay out of said fund

agreeably to the provisions of this Act, the interest from time to time, as it may become due on the bonds to be issued by the different railroad companies, under authority of this Act; also to receive and demand semi-annually, the sum of one-half of one per cent. (after each separate line of railroad is completed), on the entire amount of the bonds issued by said railroad company, and invest the same in stocks of the United States, or state securities, or in the bonds herein provided to be issued by said company. And trustees shall also invest the surplus interest of said sinking fund investment as it may accrue. Said trustees shall also demand and receive from each railroad company named in this Act, the amount due to the internal Improvement fund from said Railroad Company according to the provisions herein contained, on account of interest on the bonds issued by said company, and a refusal or neglect on the part of the president and directors of any railroad company herein named to comply with the provisions of this Act, as to the payment to said trustees of the amount due and payable to the fund, as provided in sections eleven, twelve and thirteen, on account of interest and sinking fund, the individual property of each, and all the directors shall be liable in an action of debt to said trustees for the amount due and unpaid, with 20 per cent. interest until paid.

SEC. 3. Be it further enacted: That all bonds issued by any Railroad Company under the provisions of this act, shall be recorded in the Comptroller's Office and so certified by the Comptroller, and shall be countersigned by the State Treasurer, and shall contain a certificate on the part of the Trustees of the Internal Improvement Fund that said bonds are issued agreeably to the provisions of this act, and that the Internal Improvement Fund, for which they are Trustees is pledged to pay the interest as it may become due on said bonds. All bonds issued by any Railroad Company under provisions of this act shall be a first lien or mortgage on the road-bed, iron, equipment, work-shops, depots and franchises; and upon a failure on the part of any Railroad Company accepting the provisions of this act, to provide the interest as herein provided on the bonds issued by said company, and the sum of one per cent. per annum, as a sinking fund, as herein provided, it shall be the dnty of Trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad, and all its property of every kind, and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bondholders. The proceeds arising from such sale shall be applied by said Trustees to the purchase and cancelling of the outstanding bonds issued by said defaulting company or incorporated with the sinking fund. Provided that in making such sale, it shall be conditioned that the purchasers shall be bound to continue the payment of one half of one per cent., semannually to the sinking fund, until the outstanding bonds are dis-

charged, under the penalty of an annullment of the contract of purchase, and the forfeiture of the purchase money paid in.

SEC. 4. Be it further enacted, That a line of railroad from the St. John's River at Jacksonville, and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks River, or Crooked River at White Bluffs on Apalochicolo Bay in Middle Florida, and to the waters of St. Andrew's Bay in West Florida, and a line from Amelia Island on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida; also a canal from the waters of St. Johns River on Lake Harney to the waters of the Indian River, are proper improvements to be aided from the Internal Improvement Fund in manner as hereinafter provided.

SEC. 5. Be it further enacted; That the several railroads now organized or chartered by the Legislature or that may hereafter be chartered, any portion of whose routes as authorized by their different charters, and amendments thereto, shall be within the line or routes laid down in section four (4) shall have the right and privilege of constructing that part of the line embraced by their charter, on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct, and upon the refusal or neglect of any railroad company now organized to accept, within six months from the passage of this Act, the provisions of the same, any other company, duly authorized by law, may undertake the construction of such part of the line as they may desire to make, and which may not be in progress of construction under a previous charter.

SEC. 8. Be it further enacted; That on the completion of the grading and the furnishing of the cross ties of twenty miles continuously, and every additional ten miles, as provided by this Act, said railroad company are hereby authorized to issue coupon bonds, having not more than thirty-five years to run, and having not more than seven per cent., annual interest, payable semi-annually in the City of New York or Tallahassee, at the option of the purchaser, at the rate of eight thousand dollars per mile for the purchase and delivery of iron rail, spikes, plates and chairs, and after the rail has been laid down on the line, the additional sum of two thousand dollars per mile, for the purchase of the necessary equipments, and said bonds shall always afterwards constitute and be a first lien or mortgage upon the road-bed, iron, equipment, work-shops, depots and franchise.

SEC. 15. Be it further enacted: That on the routes indicated for the construction of the different lines of railroad, the State hereby grants to each of the different companies that may hereafter construct portions of such line or route, the alternate sections of State

lands on each side for six miles, but the title to same shall not vest in the company except as the road progresses, and not until thirty miles are completed, when the company may sell one-half of the same within said thirty miles, and on the completion of thirty additional miles, then they may sell the balance of their lands, remaining unsold in the first thirty miles, and so on for each division of thirty miles until the road is completed.

SEC. 16. Be it further enacted: That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the public lands included in the trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, *and make such arrangements for the drainage of the swamp or overflowed lands, as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land*, and the said Trustees shall encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable; provided, that in no case shall a pre-emption for more than one section of land be granted to any one settler.

SEC. 17. Be it further enacted: That the Board of Internal Improvement recommend the construction of a navigable canal, connecting the waters of the St. Johns River with those of Indian River, the State Engineer is hereby authorized to make a final location of same as soon as practicable, and furnished detailed estimates and plans for the information of persons desirous of engaging in the work, and invite bids for its execution for one year, the bidders to specify the amount for which they will do the work, and the mode and manner in which payments are to be made, whether in lands or money, or in portions of each.

And the Trustees of the Internal Improvement Fund are hereby authorized to pay out of said fund, as the work progresses, the whole amount agreed upon by the terms of the contract, provided the entire cost shall not exceed four thousand dollars in money, and four thousand acres of land per mile; provided further, that the Trustees of the Internal Improvement Fund shall be of opinion that this sum in money can be applied to said purpose without impairing the efficiency of the fund for railroad purposes.

SEC. 21. Be it further enacted. That should the Government of the United States grant land to the State of Florida, for the purpose of aiding in the construction of the lines of railroad indicated, and their extensions, by general or special act, said lines of railroad shall be entitled to all the benefits and advantages arising from said grant, that the State of Florida would be entitled to by the construction of said lines of railway and their extensions, and the Governor of the state is hereby authorized and required, should such an act be passed by the Goverment of the United States, to direct said railroad companies to select said lands, and after such

selection to give the Secretary of the Interior notice of such selection, and furnish him with a list of lands so selected, the number of each section, fractional section or sub-division, or take such other action as may be necessary to fully secure the grant of lands to said railroad companies, subject to all the conditions and restrictions of the Act of Congress making such grant.

SEC. 29. That the alternate sections of the swamp and overflowed lands for six miles on each side, may be granted by the General Assembly to such railroad companies to be hereafter chartered as they may deem proper, on their compliance with the provisions of this act, as to the manner of constructing the roads and drainage, and the sale and transfer of the alternate sections thus granted shall be in accordance with the provisions of this act.

IN SUPREME COURT OF UNITED STATES OF AMERICA.

UNION TRUST COMPANY OF NEW YORK, Appellant,

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT COMPANY and TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

It is hereby stipulated and agreed by and between William Fullerton and C. P. & J. C. Cooper, solicitors for appellant, and Wayne McVeagh, Esq'r., solicitor for appellees, The Trustees of the Internal Improvement Fund of Florida, that the certified copy of the decree in the case of Charles Greenough, as administrator, etc., of Francis Vose *et al. vs.* Trustees of the Internal Improvement Fund of the State of Florida *et al.*, dated December 11th, 1883, hereto annexed (upon the certificate of the clerk of the United States circuit court for the northern district of Florida, also hereto annexed), shall be treated and considered as a part of the record in the case of Union Trust Company of New York *vs.* Southern Inland Navigation and Improvement Company and Trustees of the Internal Improvement Fund of Florida, now in Supreme Court of United States of America, in all respects as if the same had been duly incorporated in the record in said case filed in said Supreme Court on the 30th of October, 1885, and of file in said Court.

WILLIAM FULLERTON,
C. P. & J. C. COOPER,
Solicitors for Appellant.
WAYNE MACVEAGH,
Solicitor for Trus. I. I. F. of Fla.

In the Circuit Court of the United States, Fifth Circuit & Northern District of Florida. In Equity.

CHARLES P. GREENOUGH, as Administrator, &c., of Francis Vose *et al.*,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLA. *et als.*

This cause coming on to be further heard, it is, on motion of The Trustees of the Internal Improvement Fund, defendants herein, no one objecting thereto, ordered, adjudged, and decreed as follows:

1st. That the injunctions heretofore granted herein against the trustees of said fund be and are vacated as to all further proceedings and actions of the trustees in the administration of said fund.

2nd. That the receiver and master herein, Aristides Doggett, Esq., be and is discharged as such master and receiver from further action in the premises, and he is hereby directed to deliver to the trustees of said fund, on the receipt of their treasurer, all bonds and other assets of said fund held by him as such receiver or master, in-

cluding those of any "sinking fund," and that he file his final accounts as such without delay for the action of this court thereon.

3rd. That this cause stand dismissed as to all pending and future proceedings of creditors of and claimants or other persons against said fund, except that all pending petitions as to or on coupons, including that of Francis —— *et al.*, trustees, and the petition of Samuel A. Swann for compensation, may proceed to a final hearing and disposition herein: Provided, however, also, That nothing herein shall preclude the right of any holder or holders of bonds of the Tallahassee Railroad Company to file a petition herein claiming that the said trust fund is liable for the payment of the principal of the said bonds and interest accruing or to accrue thereon, for the settlement of the liability of said fund, in respect of said bonds or the interest accruing or to accrue thereon, and the duties of said trustees as to said bonds and interest: And provided further, That this court may settle the claim of said master and receiver as such for any compensation that may be due him.

Adjudged and decreed in open court this 11th day of December, A. D. 1883.

THOMAS SETTLE, *Judge.*

Endorsement: Decree of Dec. 11th, 1883, dissolving injunction, &c. Filed Dec. 11th, 1883. Philip Walter, clerk.

I, Philip Walter, clerk of the U. S. courts, 5th circuit, northern district of Florida, do hereby certify that the foregoing is a true and correct copy of its original now on file and of record in my office.

In witness whereof I hereunto set my hand and official seal, at the city of Jacksonville, in the district and circuit aforesaid, this the 5th day of January, A. D. 1889, and of the Independence of the U. S. the 113th year.

[Seal U. S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.]

PHILIP WALTER, *Clerk.*

In U. S. Circuit Court, Northern District of Florida.

CHAS. P. GREENOUGH, Adm'r,

vs.

TRUSTEES INTERNAL IMP. FUND OF FLA.

In Matter of Petition of WILLIAM H. GLEASON, H. C. HEPBURN intervening.

UNION TRUST COMPANY

vs.

SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO.; TRUSTEES OF IMP. FUND OF FLORIDA.

It is agreed by the solicitors representing the parties in above-styled suits that all testimony taken in said suits may be used as testimony in each of said suits as if taken in each, and that such portions of the record of the case of Francis Vose *vs.* Trustees I. I.

Fund of Florida as refer to the matters involved in above causes and are admissible as testimony may be used and read as testimony at the hearing of said above-named causes.

ED. M. CHENEY,
Sol. for Wm. H. Gleason and S. I. N. & Imp. Co.
FLEMING & DANIEL,
Sol's for Trustees of I. I. F. of Fla.
W. FULLERTON,
C. P. & J. C. COOPER,
Sol's for Union Trust Co. and H. C. Hepburn.

Endorsement: Agreement to use testimony in each case. Filed Dec. 24th, 1884. Philip Walter, clerk.

In United States Circuit Court, Northern District of Florida.

THE UNION TRUST COMPANY
vs.
THE SOUTHERN INLAND NAVIGATION COMPANY and TRUSTEES OF INTERNAL IMPROVEMENT FUND OF FLORIDA.

I hereby certify that the decree in the case of Charles Greenough, administrator of Francis Vose, *vs.* Trustees of Internal Improvement Fund of Florida, dated the 11th day of December, A. D. 1883, a true copy of which is hereto annexed, is a part of the record in said cause, and was used in evidence as a part of said record in the above-entitled cause of Union Trust Company *vs.* The Southern Inland Navigation Company and Trustees of the Internal Improvement Fund of Florida at the hearing thereof, under the agreement contained in said cause as to using in evidence the record in said Vose case, a copy of which agreement is also hereto annexed; and I further certify that said decree was omitted from the copy of record in said cause of Union Trust Company *vs.* Southern Inland Navigation Company *et al.*, now in United States Supreme Court, by mere inadvertence, and properly forms a part of said record.

In witness whereof I have hereunto set my hand and seal of said U. S. circuit court for northern district of Florida this 7th day of January, A. D. 1889.

[Seal U. S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.]

PHILIP WALTER, *Clerk.*

[Endorsed:] Supreme Court U. S. 1888, Oct'r term. No. 191. The Union Trust Company of N. Y., app't, *vs.* The Southern Inland Navigation & Improvement Co. Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 21, 1889. James H. McKenney, clerk.

SUPREME COURT OF UNITED STATES.

The Union Trust Company of New York

vs.

The Southern Inland Navigation and Improvement Company, and the Trustees of the Internal Improvement Fund of Florida.

October Term, 1888.

No. 191.

COUNTER-STATEMENT.

The present suit involves the title to two million acres of land in Florida, part of the public domain granted by the United States to the State, and set apart for public purposes by the State Legislature by the act of 1855 and its supplements. On February 10th, 1871, four of the six public officials of Florida who, by virtue of their office, acted as trustees of the Internal Improvement Fund, assumed to grant this vast acreage to a company of private individuals incorporated under the name of the Southern Inland Navigation and Improvement Company. The consideration for the grant is stated in the deed as one dollar. (Record, page 7. See deed, pages 6–38.)

Two of the trustees, Messrs. Gamble and Meek, declined to join in the grant. (Page 146.)

At the time of the execution of the deed an injunction was pending against the then trustees, restraining them from disposing of the lands of the fund otherwise than in strict accordance with the provisions of the act of 1855, or for merely nominal prices; and also restraining them from selling said lands for scrip or aught else than current money of the United States. This injunction was granted by Judge

Woods, circuit judge for the Northern District of Florida, December 6th, 1870. (Page 238.)

The Southern Inland Navigation and Improvement Company was made a party defendant to the suit in which the injunction was issued, and on December 29th, 1870, was served with a subpœna to answer the bill. (Page 70.)

On February 6th, 1871, a decree *pro confesso* was entered against the trustees and the Southern Inland Navigation and Improvement Company. (Page 240.)

Notwithstanding this, the majority of the trustees, as if eager to disobey the orders of the court, executed the deed, as stated, February 10th, 1871. Promptly upon being invested with this apparent paper-title to this vast domain, the Southern Inland Navigation and Improvement Company, on March 20th, 1871, proceeded to mortgage the property for $5,000,000 to the Union Trust Company of New York, and to authorize the issue of coupon-bearing bonds to that amount. In the mortgage or trust deed this land was valued at from two dollars and fifty cents to thirty dollars per acre, and the total valuation was placed at $19,992,697. (Record, page 46.)

Fifty of these bonds were hypothecated by the Southern Inland Navigation and Improvement Company to W. H. Bennett, a London solicitor, in 1876 or 1878, as security for a loan of $15,000. (Page 91–98.) He actually obtained them in 1882. (Page 95.)

They were immediately sent to this country and, upon an arrangement failing between Bennett's representatives and the Southern Inland Navigation and Improvement Company (page 114) to have the deed of trust foreclosed upon them, they came into the possession of Henry C. Hepburn, under some sort of a transfer. No money was paid to Bennett for the bonds (page 96), though counsel in the case testified that some money did in fact pass to the party claiming to represent him. Hepburn, through his trustee, the Union Trust Company, then brought the present foreclosure suit, April 12th, 1883.

The facts in detail, and as bearing on the decision rendered by the court below dismissing the bill, will appear more at length in the argument.

ARGUMENT.

In order that the exact issue before this court, as before the Circuit Court, may clearly appear, it is important that one or two preliminary facts be noted. This is not a contest alone as to the *bona fides* of an issue of negotiable bonds and of the validity of a trust deed to secure them, nor is it merely a question of validity of title to such securities in the hands of a holder as against the corporation whose name they bear as obligor. The main and essential question is as to title to real estate which that corporation undertook to use as its own to secure its obligations.

The Southern Inland Navigation and Improvement Company, as the record will show, united with the plaintiff in contending that title to the lands in question became regularly vested and remained in the plaintiff as security for the claims of its bondholders; it contended, through its president, Gleason, that not only Hepburn's bonds, but $750,000 of other bonds, were outstanding and entitled to the same security of these lands. (Pages 77, 114.)

The trustees of the Improvement Fund not only deny the *bona fides* of Hepburn's ownership and his rightful *status* as a suitor, but particularly insist upon the absolute freedom of the lands in suit from any charge or claim of the plaintiff growing out of the bond issue in question.

It will be convenient to consider the case in this dual aspect.

I. *The bondholder suing has no* status *as a suitor under the trust deed and is not a* bona fide *purchaser without notice of defence to the bonds.*

II. *The legal and equitable title to the lands in suit is in the trustees of the Internal Improvement Fund and no principle of law or equity requires or permits a recognition of the claim as made against the trustees.*

I. (a.) *The bondholder has no* status *as a suitor under the trust deed.*

The suit is brought by the Union Trust Company of New York, by request of Henry C. Hepburn, who claims to be a holder of fifty bonds. The Union Trust Company being therefore only the nominal plaintiff, the *status* of Hepburn, who is the real plaintiff, is all that need be considered.

The foreclosure proceedings were undertaken by the trustee under article 16 of the trust deed, which authorizes the trustee to begin legal proceedings to enforce the rights of bondholders upon the requisition of not less than $500,000 in the aggregate amount of said bonds. It appeared in evidence that $750,000 of the bonds, in addition to those held by Hepburn, were claimed to be outstanding. They were issued by the trust company and held in London subject to the order of the Southern Inland Navigation and Improvement Company. The president of the latter company testified that they belonged to the American Contract Company. (Pages 77, 110–118.)

If this be the case, the requisite amount of outstanding bonds is not represented in the suit to enable the Union Trust Company under the authority of its trust deed to bring this suit.

(b.) *The bondholder suing is not a* bona fide *purchaser of the bonds without notice of the defense to them.*

Bennett obtained these bonds in 1878, and again in 1882, after having deposited them with others in a bank on behalf of the Southern Inland Navigation and Improvement Company. Hepburn obtained them in 1883. The trust deed to the Union Trust Company had been executed in March, 1871, and the bonds issued shortly thereafter. The bonds bore date May 1st, 1871, and the first coupon was payable six months thereafter. (Page 41.) No coupons on the outstanding bonds were ever paid. (Page 118.) We have, therefore, a party claiming the *status* of a *bona fide* holder who buys bonds on which the interest is in default

for a number of years. The smallest amount of inquiry by Hepburn would have enabled him to ascertain the true character of the bonds he was procuring.

See Trask *vs.* Jacksonville, Pensacola & Mobile Railroad Company, 124 U. S., 515, 517.

The following is a brief history of the lands in suit, and the litigation over them, up to the time of acquisition of the bonds by Hepburn:—

Francis Vose, November 3d, 1870, filed a bill in the Circuit Court of the United States for the Northern District of Florida against the trustees of the Internal Improvement Fund, the Southern Inland Navigation and Improvement Company, and others. (Page 151.) Vose was the owner of some coupon bonds of certain Florida railroads whose construction the Internal Improvement Fund Act of 1855 was intended to encourage.

The act of 1855, creating the Internal Improvement Fund, vested the public lands in certain trustees, with provisions that they should be held as a trust, and disposed of to pay for the improvements contemplated by the act. Vose charged in his bill that the then trustees of the Internal Improvement Fund had fraudulently misplaced and wasted, and were at the time fraudulently misplacing and wasting, the public lands by donating them, or selling them for nominal considerations, to various private parties mentioned in the bill. Among the latter was named the Southern Inland Navigation and Improvement Company, to whom it was charged the trustees had attempted to secure some of the lands. Various interrogatories as to the conduct of the trustees were contained in the bill, which they were asked to answer. Among the prayers of the bill were the following: *That the trustees be required by order and decree of court to protect from waste, the fund in money, choses in action, land, and other property liable for the payment of railroad coupons and bonds not yet due. * * * that they may be restrained and enjoined from selling said lands for scrip of any kind, or for aught else than the current money of the United States.* (Page 165.) Judge Woods issued an injunction, December 6th,

1870, in which, *inter alia*, the following facts were found: That "*the said trustees are misapplying the funds belonging to said trust, are improperly and fraudulently misappropriating the same, are selling and transferring said lands in amounts, in manner, and for considerations that are wholly inconsistent with and violative of said act* (1855); *that you are donating and disposing of the same for merely nominal prices, and for scrip and State warrants not recognized as the lawful currency of the United States.*" The injunction order provided that the trustees should "*desist from selling said lands for scrip or State warrants of any kind, or for aught else than current money of the United States.*" (Page 239.)

The bill as stated was served on the Southern Inland Navigation and Improvement Company December 29th, 1870, and February 6th, 1871, a decree *pro confesso* was entered against that company and other defendants. Nevertheless, within four days after the decree the trustees proceeded to convey, and the Southern Inland Navigation and Improvement Company to accept, a conveyance of ~~ten~~ two millions of acres of public land. The latter company then at once executed the trust deed to the Union Trust Company, and provided for the issue of the series of bonds sued on in this case.

In April, 1871, Vose filed a petition reciting the issuing of the injunction in the preceding December, and informing the court of the discovery that, prior to the filing of his bill in November, the trustees had agreed to sell about one and one-quarter millions of acres of public land to the Southern Inland Navigation and Improvement Company, but that the sale was not consummated until within about a month then preceding, but after the writ of injunction had been served. The petition recited an act of Assembly of Florida, declaring it to be the policy of the law that such sales should not be made, as tending to depreciate the real estate held by the fund, and to prevent actual settlers from getting homes, and to strengthen corporations at the expense of the State government. The petition prayed the appointment of a receiver of the property administered by

the trustees, and an order upon the trustees and others to show cause why the penalty provided in the injunction should not be inflicted on them. (Pages 172–184.)

An order to show cause was entered April 17th, and leave to answer by the 8th of May was granted the defendants. Answers were filed admitting the execution of the deed of February 10th, stating it to be for several hundred thousand acres, and defending it on the ground that it was in execution of a contract of sale entered into prior to the injunction. (Pages 185, 194.)

A hearing was had May 18th before Mr. Justice Bradley, who refused to dissolve the injunction, and held, among other things, that the trustees had violated it. Whereupon a further petition was presented by Vose, reciting these facts, and also that the trustees since the granting of the injunction had assumed to sell twenty-three thousand one hundred and sixteen and one one-hundreth acres of land to the Southern Inland Navigation and Improvement Company, for $28,116.01, receiving in payment therefor coupons which had previously been deposited with the treasurer, Conover, and also sold other lands for $2040.43, receiving in payment like coupons. It renewed the prayer for infliction of a penalty and for receiver, and prayed an attachment for contempt. (Pages 205, 212.)

This petition was filed April 22d, 1872, and a hearing was fixed for April 29th.

An attachment as for contempt was issued against the trustees by Judge Fraser June 1st, 1872, and Aristides Doggett, Esq., appointed receiver. (Page 254.)

The trustees filed separate answers (pages 212–238), Drew, Adams, Conover, and Harrison defending the execution of the deed of February 10th, 1871, on the ground that it was but carrying out a preceding contract. Gamble, the comptroller, one of the trustees, in his answer denied the authority of the trustees to execute the deed, and stated that he had refused his assent or signature to it. Issues were framed upon the allegation of the bill.

On the 4th of December, 1873, after all the pleadings had

been filed and hearings had, a decree was entered by Judge Woods whereby it was ordered *that the contracts or agreements entered into by the trustees with the Southern Inland Navigation and Improvement Company "be rescinded, and the same are declared null and void, and the lands undertaken to be conveyed or contracted to be conveyed, shall be restored to the said Internal Improvement Fund and be subjected to sale by the agents appointed by the court.* (Page 250.)

Subsequently, in 1874, William H. Gleason, who was president of the Southern Inland Navigation and Improvement Company, and who was interested in maintaining the sale of February 10th, 1871, filed a sworn petition in the cause, admitting and reciting that, by virtue of the decree made and entered December 4th, 1873, the deed made and executed by the trustees to his company was ordered to be canceled, and the said lands to be reconveyed and restored to the Internal Improvement Fund. It further recited that the said deed *was* canceled, and the said lands restored, as therein directed. (Page 73.)

On May 18th, 1875, the Southern Inland Navigation and Improvement Company filed a petition for vacation of the decree of December 4th, 1873, so far as related to itself, and for leave to file pleadings in the cause. This motion was denied by Mr. Justice Bradley, sitting as circuit justice, March 26th, 1877. (Page 252.)

The lands having been restored to the Internal Improvement Fund, were, many of them, actually sold thereafter by the fund to parties other than the Southern Inland Navigation and Improvement Company.

After all this litigation, beginning in a command of the court to the trustees and the Southern Inland Navigation and Improvement Company not to enter into the sale of February 10th, 1871, culminating in a cancellation of the pretended deed of sale when attempted, and a restoration of the land to the fund, and, finally, terminating in the deliberate refusal of the court to open or set aside its decree upon the application of the improvement company, when it found itself, as a just penalty for its fraud, shorn of its

unlawfully acquired property—after all this—Bennett, the London solicitor, acquires these bonds, and disposes of them to Hepburn, in 1883, ten years after the lands had passed back to the Internal Improvement Fund.

It can scarcely be conceived that either Bennett or Hepburn was actually ignorant of this flagrant and notorious breach of trust and violation of injunction, on the part of the trustees and the improvement company, of the decree of court annulling the fraudulent transfers, and the consequent failure of title in the improvement company and the Union Trust Company. They were both business men of presumed experience, and must have investigated before they bought. But, that aside, they clearly had such constructive notice of the want of title in their trustee, the Union Trust Company, as prevents them from asserting it here.

1. *They had notice by adverse possession.*

Possession is notice of claim, and the purchaser buys subject to that notice.

Bigelow on Estoppel, 548.

When they bought these bonds the lands had passed back to the Internal Improvement Fund, and some of them had already been sold to outside parties. This the record clearly shows, and it is admitted, and relied upon as an argument, in the brief of the appellant. (Appellant's brief, pages 6, 16, 17.)

The lands were neither in the possession of the Southern Inland Navigation and Improvement Company nor of the Union Trust Company of New York, and both Bennett and Hepburn were bound to inquire of those in possession. Such an inquiry would have disclosed the facts as contained in the record, and they are chargeable with notice of them.

2. *They had notice by the* lis pendens.

In considering the effect of the *lis pendens* in this case it must be kept in mind, as insisted on above, that this is not a

suit to test the title to the bonds sued on, which are alleged to belong to Hepburn, for whom the Union Trust Company sues. It is to test the title to real estate conceded to have passed back to the Internal Improvement Fund, but now claimed to be in the Union Trust Company. This being the case, the statement of the rule of notice by *lis pendens* made by this court in County of Warren *vs.* Marcy, 97 U. S., 96, 105, is directly in point: "It is a general rule that all persons dealing with property are bound to take notice of a suit pending with regard to the title thereto, and will, on their peril, purchase the same from any of the parties to the suit."

The rule of *caveat emptor* applies with all its force. A purchaser of land buys at his peril, and is bound to look to the title and to the competency of the vendor.

See Enfield *vs.* Jordan, 119 U. S., 680, 692, 693;
Murray *vs.* Ballou, 1 Johns. Chanc., 566;
Stuyvesant *vs.* Home, 1 Sandf. Chanc., 419.

The only exceptions to the rule are negotiable securities and articles of ordinary commerce sold in the ordinary way.

All the authorities cited by the appellant, at page 9 of its brief, as well as elsewhere, to support the doctrine that the party taking title in this case was not affected with notice of the *lis pendens*, are cases where the only question at issue was the ownership of negotiable securities. They are therefore irrelevant. When the Union Trust Company took formal paper-title to these lands in March, 1871, from the Southern Inland Navigation and Improvement Company, an injunction was pending, and a decree *pro confesso* had been entered against it.

At the time that Bennett and Hepburn obtained the bonds, the real periods of acquisition of interest for purposes of this controversy (for the trust company is only a nominal party), a final decree adverse to the present claim had long since been entered, which the court, upon application, had refused to set aside.

It is objected that there was no contest in the Vose suit as to the lands contracted to be conveyed to the Southern Inland Navigation and Improvement Company.

But *lis pendens* is notice of everything *averred in the pleadings pertinent to the issue* or to *the relief sought*, and of the contents of exhibits filed and proposed.

Pomeroy's Eq. Juris., section 634;
Center *vs.* Bank, 22 Ala., 743.

The original Vose bill averred the wasting of public lands by the trustees, by donations and sales for nominal prices, and sought relief by prevention of such donations and sales. The Southern Inland Navigation and Improvement Company was a party to the suit as early as December, 1870. The injunction restrained such waste and enjoined against sale for other than United States currency. The decree *pro confesso* of February, 1871, affirmed all the averments of the bill. The later decrees restored the land. Surely a subsequent acquisition of title by bondholders, derived as it was from a transaction in direct violation of the injunction, cannot be free from taint.

It is next objected by the appellant, as it was pleaded with unanimity by the four trustees, when called to account for their misdeeds, that the execution of the deed of February 10th, 1871, was merely carrying out a contract of sale entered into a long time previous to the filing of the Vose bill and the issuing of the injunction of December 6th, 1870. It is argued from this that a right in the trustees to execute the deed, and in the Southern Inland Navigation and Improvement Company to accept it, existed in spite of the words of the injunction and its plain intent.

The same argument would permit the trustees to have conveyed the whole public domain on the same terms upon which they conveyed two million acres of it, namely, for almost nothing, if prior to the court's knowledge of their attitude toward their trust, they had happened to have succeeded in making the proper contract with their willing

coadjutors in fraud who could act as contracting parties with them. This would make a court powerless to protect the public against trustees' infidelity. It would elevate duplicity in public officials out of the region of legal restraint. It would make breach of trust a fine art. It would make conspiracy profitable beyond measure. It would put at the mercy of four agents of the State the credit and life of the State. It would invite State impoverishment, because, forsooth, the State's servants had willed it for their own selfish ends. It is not only clear as matter of principle that trustees, after injunction, may not with success transfer lands to others with whom they have a prior contract to convey it; but it is very clear, upon authority, that they may not do so.

"Where persons having an equity in land are made parties to a suit concerning its title, brought by the *cestuis que use* against the trustee, as the Southern Inland Navigation and Improvement Company was made a party in the Vose suit, by service of subpœna, December 29th, 1870, they may not subsequently have the title perfected by deed from the trustees."

Trimble *vs.* Boothby, 40 Ohio, 109;
Gibler *vs.* Trimble, *Id.*, 323.

And even if a person is not a party to a suit concerning title, yet if he purchase pending such suit he will be considered a purchaser with notice.

Allen *vs.* Poole, 54 Miss., 323;
Center *vs.* Bank, *supra;*
Pomeroy's Eq. Juris., section 634.

The Vose suit, it is needless to say again, charging, as the bill of November 3d, 1870, did, a current waste of public lands, and praying an injunction against "selling, disposing of, or in anywise intermeddling with [the public lands] until the further order of the court," was a suit directly concerning the title to such of them as were afterwards attempted to be conveyed.

II. *The legal and equitable title to the lands in suit is in the trustees of the Internal Improvement Fund, and no principle of law or equity requires or permits a recognition of the claim as made against the trustees.*

The decree of December 4th, 1873, restored the lands to the trustees. The president of the Southern Inland Navigation and Improvement Company swore that they were actually so restored, and the previous deed to his company canceled and delivered to the trustees. If a conveyance was executed back to the trustees, the legal title is very clearly in them.

If, however, no conveyance was in fact so executed, it was not necessary, as the decree of the court was self-operative.

In any event, the sole title, for purposes of cognizance by a court of equity, is in the trustees, and those to whom they have conveyed the various lands in accordance with the decree.

In equity that is done which ought to be done, and no technical objection can avail against the application of this principle to this case.

It will be proper now to examine the various propositions in the appellant's argument more in detail than they already have been considered.

1. *That the trustees had the power to make the deed of February 10th, 1871.*

They were doubtless given liberal powers. But these powers did not extend to wasting the estate in their hands. The sale of February 10th, 1871, at the most favorable estimate of price for the appellant's contention, was for $56,782.50 in railroad coupons, much depreciated at the time. (Page 73.) These, it is claimed, were delivered to the treasurer of the fund April 9th, April 13th, and September 10th, 1870. (Page 75.)

Taking the acreage sold at two million acres, as stated in the mortgage sued on, and assuming, which was not the fact, however, that the coupons were worth par, the price per acre was two and eight-tenths cents.

Assuming the acreage to have been one million three hundred and sixty-two thousand six hundred and sixty-eight one-hundredths acres, as stated in the deed of 10th February, 1871 (page 38), the price would be slightly over four and one-tenth cents per acre.

The General Assembly of Florida passed a resolution February 12th, 1870, as follows:—

"*Whereas*, It is understood by this General Assembly that the trustees of the Internal Improvement Fund have sold, or are about to sell, the lands in Escambia and Santa Rosa Counties, for *six cents per acre*, to the Pensacola and Louisville Railroad Company, therefore—

"*Resolved by this Assembly, the Senate concurring*, That *any such sale ought not to be made;* that its effect is to depreciate the real estate held by the fund; to prevent actual settlers from getting homes; to make citizens look to the liberality of a corporation instead of to the State's fostering care of her citizens; to weaken the State government and State authorities, and strengthen a corporation; to reduce the value of State lands, and, therefore, that the trustees ought not to make said sale to said corporation." (Page 182.)

This resolution of the people, acting by their representatives, was passed before a single coupon had been delivered by way of anticipation payment for the deed to Gleason or his company. It sets the seal of condemnation on sales at six cents an acre, and, of course, on sales at two and eight-tenths or four and one-tenth per acre. It is to be taken as a legislative construction of the act of 1855, section 16, which gave to the trustees the power to make arrangements for the drainage of land, *and the settlement and cultivation of the land.*

It is submitted that the trustees, in 1870 and 1871, did not have the power to make the grant in question.

2. *That the act incorporating the Southern Inland Navigation and Improvement Company, independent of the act of 1855, gave to the trustees the power to make the sale.*

By the incorporation act of 1868, section 8, the trustees are authorized to make concessions of land to aid in the improvements contemplated by the act.

But two years after, and before the present deed was executed, the people of the State, as has been shown, very plainly expressed their conclusion that it was *not for the best interests of the State* for the trustees to have a discretion to dispose of lands to such companies as the Southern Company in the way contended for by the appellant.

3. *That the present trustees are estopped from disputing the appellant's claim by the action of their predecessors in assuming to pass title to the lands.*

The cases cited to support this position—Daniels *vs.* Tearney, 12 Otto, 415, and Railway Company *vs.* McCarthy, 6 Otto, 267—merely decide that title to *negotiable bonds* cannot be impeached for want of power to execute them by the obligor, after he has received and enjoyed their proceeds. If the bonds sued on in this case were those of the State of Florida or of the trustees of the Internal Improvement Fund, and if the real contest as against the trustees was as to title to the bonds and not title to real estate, the argument might have force. As it is, it is without merit.

4. *That Bennett and Hepburn, the successive bondholders, exercised more than ordinary care in looking into the nature of their purchase.*

As matter of fact they used more than ordinary care to keep ignorant of the utter worthlessness of the bonds, so far as concerned the question of lien upon the lands of the Improvement Fund.

They obtained the bonds in 1878 and 1883. Certificates of Florida officials dated in 1871—*twelve* years before Hepburn got his bonds, *seven* years before Bennett got them, and *five* years before Bennett had anything to do with them—are relied on to show an investigation as to the validity of the land transfers which are claimed to be security for the bonds. It is altogether a novel proposition for a real estate

purchaser to assert that searches and certificates twelve years old are valuable as showing a *bona fide* present *status*.

May it not, on the contrary, be asserted that the very acceptance of such certificates without question, shows a wish or intention to avoid inquiry as to the current *status* of the title, as their submission for acceptance by Bennett showed a very plain intention on the part of the then negotiators of the bonds that the subsequent history of the lands should be concealed?

But what are these certificates?

There are eleven in all. (Pages 104–109.)

The first is that of the Secretary of State of Florida, dated November 17th, 1871, to the effect that the trustees who signed the deed were *bona fide* trustees.

The second, of the same date, is by three of the trustees themselves, certifying to the legality of their own acts.

The third is by J. S. Adams, one of the trustees, certifying the title as such trustee. It is dated October 31st, 1871.

The fourth certificate, of like date, is a certificate of Harrison Reed, governor, and one of the trustees, indorsed by Hamilton Fish, United States Secretary of State, to the effect that J. S. Adams was secretary of the Internal Improvement Fund.

Every one of the trustees signing these certificates was subsequently attached for contempt for doing the very acts which they certified to as valid. (Page 254.) This fact and the subsequent avoidance of their acts, both Bennett and Hepburn, had they cared, could have readily ascertained.

There are six certificates of the clerks of St. John, Marion, Orange, Volusia, Putnam, and Brevard Counties to the effect that the property of the Southern Inland Navigation and Improvement Company was unincumbered by matters of record in the respective counties, and that it had not conveyed any of the lands previously deeded to it by the trustees. These certificates, as also the next, are dated April, 1871.

The last one is that of the clerk of the Circuit Court of the United States for the *Southern* District of Florida, that

there was no judgment, injunction, or suit pending in his district against the Southern Inland Navigation and Improvement Company.

It will be observed that there is no certificate from the clerk of the Circuit Court of the United States for the *Northern* District of Florida. Such a certificate was doubtless not wanted, as it would have disclosed the evidence of the Vose suit and injunction as early as December, 1870.

It may be noticed that the lands in suit are situated in the Northern, and not in the Southern, District of Florida, the dividing line between the districts being a line drawn due east and west from the northern part of Charlotte Harbor.

Rev. Statutes, section 534.

It was therefore the special province of the clerk of the Northern District to certify to the facts as to this Southern Inland Navigation and Improvement Company and its lands. But whether it was his province or not so to do, and whether the lands were in his district or not, inasmuch as process from one district in a State runs into another district in the same State, no searches are complete without representing all the districts of a State.

It is very plain that the omission of the trustees and of the Southern Inland Navigation and Improvement Company to furnish certificates from the Northern District of Florida, shows their intent to commit a fraud, and of itself justifies a characterization of them as deliberate plunderers of the public domain.

And now it is contended for the successive bondholders in this case that, after a willing neglect to investigate where they could readily have found out the truth as to the property claimed, they may present as evidence of their *bona fides*, old and worn-out certificates of search, obtained at a time and from sources which made them valueless for purposes of giving real information, but serving very readily, by a *lucus a non lucendo*, as a substitute for a real investigation where they did not care to investigate. The very statement of this contention stamps it as a pretence.

5. *That the present trustees are estopped by the certificates of title given by their predecessors.*

The answer to this argument is that the trustees had no authority, nor was it their duty, to give the certificates they gave, nor did any law of Florida or of the United States make such certificate, when given, conclusive upon anybody.

When the Constitution or a statute of a State requires, as essential to the validity of municipal bonds, that they shall be registered in a State registry and receive by indorsement a certificate of one or more State officers, showing that they are issued in pursuance of law, *and the Constitution or law gives no conclusive effect to such registration or to such certificate, the municipalty is not concluded by the certificate from denying the facts certified to.*

A recital in a municipal bond of facts which the corporate officers had authority by law to determine and to certify, estops the corporation from denying those facts; *but a recital there of facts which the corporate officers had no authority to determine, or a recital of matters of law, does not estop the corporation.*

Dixon County *vs.* Field, 111 U. S., 88;
See Northern Bank *vs.* Porter Township, 110 U. S., 608.

If the trustees recited in 1871, contrary to the fact and the law, that the title to these lands was absolute in the Southern Inland Navigation and Improvement Company, the only effect of such recitals is to make these particular trustees personally liable to those who might have been entitled to rely upon them and were deceived.

As matter of fact only three trustees gave certificates. There were six trustees in all. It is idle to claim that title to real estate passed by estoppel in this way.

6. *That the complainant is not bound by the Vose proceedings, because it was never made a party to them.*

The complainant is merely a trustee for others, the bondholders. It is *their status* and not *its* that must be considered.

The argument of the appellant, if sound, would enable a naked trustee to hold title as against all the world although the passing of title was fraudulent, and although his *cestuis que trust* might be cognizant of the fraud.

7. *That the* lis pendens *cannot be urged against the appellant, because no specific land is described in the Vose bill.*

The object of the Vose bill, of the injunction of December 6th, 1870, and of the decree of December 4th, 1873, was to preserve all the lands of the Internal Improvement Fund from fraudulent sale or disposal by the trustees.

Whatever land was therefore undertaken to be disposed of by the trustees was subject to the litigation.

8. *That the purchaser* pendente lite *was affected with notice of the rights of only the plaintiff Vose and not of the co-defendant, the trustee of the Internal Improvement Fund.*

A reference to Pomeroy's Equity Juris., section 638, relied upon by appellant, shows that the authority for the doctrine is Bellamy *vs.* Sabine, 1 De G. & J., 566.

Referring to that case we find the principle in point is, that a purchaser *pendente lite* from one defendant is not affected without notice of the other defendant's rights *when it is not necessary for any of the purposes of the suit to give effect to the other defendant's rights.* In the Vose case it *was* necessary to give effect to the rights of the other defendant, the State of Florida acting by its representatives, the trustees of the Internal Improvement Fund. For unless title were declared and preserved in the trustees, Vose himself could not have for his bonds the land security he claimed, and to which he was held entitled.

9. *That the decree of December 4th, 1873, only restores the land theretofore contracted to be conveyed, and which had not been conveyed. That it therefore does not relate to lands actually conveyed February 10th, 1871.*

The words of the decree are lands *undertaken to be conveyed* or *contracted to be conveyed.*

It is a rule of construction of written instruments that every word must be given force, if possible. If the words "undertaken to be conveyed" mean "contracted to be conveyed," they are of no force in their connection, and the phrasing is tautological. The proper and sensible meaning of the words is *attempted or assumed to be conveyed*, referring to the transaction of February 10th, 1871.

Vose, in his petition filed April, 1871 (page 175), referred to this transfer of February 10th, 1871, and secured an attachment upon the trustees for making it after being enjoined. The decree of December 4th, 1873, was intended to restore the former *status quo*, or it was meaningless. If only the lands contracted to be conveyed were referred to in the decree, and not also the lands attempted to be conveyed, why was it necessary to *restore* the lands? Surely a decree cancelling executory contracts relating to them would have been sufficient.

10. *That the Southern Inland Navigation and Improvement Company is not bound, because the decree* pro confesso *was taken in February, 1871, before the petitions in reference to this deed were made.*

The Southern Inland Navigation and Improvement Company is bound, not only by the decree, *pro confesso*, of February 6th, 1871, but especially by the decree of December 4th, 1873, which was entered more than a year after the allegations as to this transfer were made. The company attempted to avoid the effect of this decree, but failed. (See order of Mr. Justice Bradley, March 26th, 1877). (Page 252.)

11. *That the lands not sold in payment of the Vose claim should be returned to the Southern Inland Navigation and Improvement Company.*

This assumes (1.) that the trustees' rightfully transferred the land, and (2.) that even if they did not, a court of equity, taking cognizance of a breach of trust, may not prevent it or avoid its effects, for purposes other than the one in hand.

If there was one fact declared by the court in its several findings and decrees in the Vose case, it was, that for the trustees to give away land to corporations, or to sell it for nominal sums, or for considerations other than cash, was in contravention of the spirit and purpose of the Internal Improvement Act of 1855, and in excess of the real powers of the trustees. The trustees, Reed, Conover, and Adams, who attempted to secure these two millions of acres of land to the Southern Inland Navigation and Improvement Company, estimated the swamp and overflowed lands unsold as of December 31st, 1868, at nine million eight hundred and fifty-five thousand seven hundred and twenty and fifty-five one-hundreths acres (9,805,720.55), and its internal improvement lands at two hundred and thirty thousand four hundred and eighty-seven and thirty-seven one-hundredths acres (230,487.37); a total of ten million eighty-six thousand two hundred and seven and ninety-two one-hundredths acres (10,086,207.92). (Page 203.)

The two million bonds in suit were attempted to be conveyed for about $56,000 in depreciated coupons.

At this rate of sale, if permitted, the whole public domain of Florida could be disposed of for less than $300,000.

As matter of fact the coupons were worth from ten cents to thirty cents on the dollar, making the market value of the whole public domain of Florida, at this rate of valuation, from $30,000 to $100,000. (Page 183.)

It was a possibility such as this, of having the State stripped of her fairest dower by unscrupulous public officials for their own selfish ends, that not only invited but required the court in the Vose suit to recognize the rights of the plaintiff therein first, but to see to it first and last that the stamp of its disapproval should be put upon all such sales, by avoiding them *ipso facto, and as to all parties.*

The appellant, in contending that the decrees in the Vose suit are vacated because his debt has been paid, would make a court powerless to correct and avoid a palpable public wrong.

The cases cited to show that a private grant fraudulent as to particular creditors is good as against the grantor as to other parties, are not applicable to the present case.

The trustees of the Internal Improvement Fund of Florida were public officials whose functions were to administer a public fund for the public good. A court of justice, the conservator of public interests, in the course of administration of the trust, discovers the trustees in the act of improper administration of the trust. Independent of the immediate cause moving it to action, it may certainly declare, for all purposes, that the administration of the trust in a certain way is not according to law, and every subsequent grantee taking title must be considered as cognizant of such declaration.

The error of the appellant's conception here is, that it assumes that the avoidance of the deed of February 10th, 1871, was only or mainly to protect Vose.

It was intended to establish the proper relation of the trustees to the land under their control as such, and to avoid for all purposes, and as against all persons, any transfers of it opposed to the true interests of that important party, the people of the State of Florida, for whose welfare the Internal Improvement Act was itself passed, and who were therefore entitled to be considered in administering its provisions.

The appellant, in closing its argument, insists upon the *status* of Hepburn as a *bona fide* bondholder, and invokes for his advantage the law of estoppel as against the trustees whose predecessors were guilty of the fraud against him. It has been seen that, however valid Hepburn's claim may be as a bondholder against the obligor in the bonds, the Southern Inland Navigation and Improvement Company, it is valueless against the trustees, *because* there was no title in the Union Trust Company when he took the bonds, *because* the prior attempt to vest such title was in violation of law, of which the trust company, and both Bennett and Hepburn had constructive notice, and *because*, upon all authority, no claim of title to real estate can be

made out against the true owner by mere possession of negotiable securities hypothecated with a representation of such title.

It has also been seen that no principle of the law of estoppel prevents the assertion of title by the present trustees, because the former trustees being without authority to execute this deed, as well by virtue of a court's construction of their powers, as by virtue of its injunction upon their acts, the constructive notice of this to the bondholder is paramount to everything else. And *in pari delicto potior est conditio defendentis.* Nor do the certificates of the former trustees work an estoppel; because they were not required to give them, they had no authority to give them, and, when given, they were made conclusive by no law or policy of the law. The decree of the Circuit Court dismissing the bill should therefore be affirmed.

As an additional reason it may be urged that even if the claim ever had any merit, it is now very stale, and has been lost by *laches.*

The lands in suit were restored to the trustees in 1873, and many of them have been sold to outside parties who are now innocent holders. It is not till 1883 that this plaintiff brings its suit.

The bonds sued on were outstanding at least half of this time, during all of which period the suit could have been brought.

Said Lord Camden, in Smith *vs.* Clay, Ambler, 645: "A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive and does nothing. *Laches* and neglect are always discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court."

This doctrine is accepted and applied by every court in England and America, and has long since passed into the category of elementary principles of equity jurisdiction.

2 Story Equity Juris., 844, note 3;

See Sullivan *vs.* Portland R. R. Co., 94 U. S., 806, 811;

Hayward *vs.* National Bank, 96 U. S., 611, 617;

Harwood *vs.* Railroad Company, 17 Wall., 78.

WAYNE MacVEAGH,

For the Trustees of the Internal Improvement Fund of Florida, Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNION TRUST COMPANY OF NEW YORK, *Appellant*,

vs.

THE SOUTHERN INLAND NAVIGATION AND IMPROVEMENT CO., AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, *Appellees*.

No. 191.

Brief of Appellant in Reply to Brief of the Trustees of the Internal Improvement Fund, Appellees.

There are numerous errors in statements of fact in the brief of the appellees, the trustees, among which is the very first statement that this suit involves title to two million acres of land, which four of the trustees, on February 10th, 1871, assumed to grant to Southern Inland Navigation and Improvement Company.

The deed from the trustees to said company conveys one million, three hundred and sixty thousand six hundred and sixty-five hundredths acres. (See Record, page 38.)

The decision of this case does not necessarily involve the title to all of this land, it involves the pay-

ment of the fifty-first mortgage bonds, principal and interest, out of the proceeds of sale of enough of this land to satisfy same. (See Appellees' brief.)

Some stress is laid upon the great valuation put upon this land in the mortgage to appellant, and upon the land involved being a vast area, &c. Whether this valuation is a correct one it is unnecessary to inquire, it is immaterial to the issues, suffice it to say such valuations, where bonds are to be sold upon the security of the lands valued, are always extreme. Actual work was done on the land, and actual benefit did accrue to the State from this deed; the rivers were made navigable between St. Johns and Indian Rivers.

It is stated and repeated in appellees' brief, that Bennett did not obtain these bonds until 1882. The record does not support this statement. The testimony, pages 91, 92, and 93 show that in 1875 or 1876 the bonds were in bank on order of Union Trust Company to be delivered to Southern Inland Navigation and Improvement Company, on payment of a certain amount due Union Trust Company ; said company, at that time, gave Bennett written order and agreement that fifty of the bonds be delivered to him as collateral at the date the loan was made, and the bonds then became Bennett's as collateral.

In 1878 Bennett actually took the bonds out of the bank and actually had them in his possession as collateral, and Reed's subsequent holding up to 1882 was Bennett's possession, as he held them under written agreement to deliver them to Bennett whenever he called for them.

But of course the date of Bennett's rights is the date of his loan, which was in 1875 or 1876.

As to the sale of these bonds to Hepburn there was an actual transfer of the bonds themselves to Hepburn, and Bennett acknowledges a credit on his debt of $10,000,—this is sufficient to pass title to Hepburn. But, in addition to this, Fullerton and Everett swear the money was paid to Everett, Bennett's agent. The S. I. N. & I. Co. are not objecting to this transfer; Bennett is satisfied with it. The bonds pass by delivery; Hepburn is the holder of them, and the appellees,—the trustees, have no interest in the transaction or right to question it.

We shall now proceed to reply to the argument of appellees, the trustees' counsel.

Some lame effort is made, in the brief of the trustees, appellees, to raise the question as to the authority of the appellant to bring this suit.

The 9th article of the deed of trust permits *any bond-holder* to institute suit on default of interest. Under this clause it makes no difference how many bonds are outstanding; one bond-holder may *use the trustee's name* as complainant to collect his bonds, principal and interest. (See pages 48 and 49 of record.)

Under Section 10 of trust deed a power of sale of all the mortgaged property is given the trustee on the written request of two-thirds of the *bonds issued*, and under the laws of Florida, which provide that every instrument securing the payment of money is a mortgage, and *title* can only pass by regular *foreclosure and sale*, this suit was properly brought at the instance of the *only bonds ever issued*, to wit, Hepburn's. (See page 49 of record.)

Sections 11 and 16 of the deed give authority of entry, sale or suit on request of five hundred thousand dollars of the bonds; but it has been decided by this court that where a less number of bonds have been issued than the number mentioned in the deed as necessary to request the suit, that those who have bonds honestly held may require such suit to collect their bonds.

We say the fifty bonds claimed by Hepburn are the only bonds ever issued; hence he had a right to demand this proceeding to collect his bonds.

The evidence of W. H. Bennett shows that he saw and handled the entire 2,000 bonds (certified by the Union Trust Co.) in 1878, when he got them from the City Bank, in London.

In 1883 these bonds, except Bennett's fifty, were still in the hands of Edward J. Reed, agent of Southern Inland Navigation Company. Up to 1878 these bonds had been in City Bank of London; put there by Union Trust Company to be delivered to Southern Inland Navigation and Improvement Company on payment of certain charges due thereon, after 1878 they remained in possession of E. J. Reed as agent of Southern Inland Navigation and Improvement Company. (See Bennett's testimony, pages 91 and 92 of record. See Gleason's testimony, pages 114 and 115 of record.)

The contract made by this company with Reed asserts that the company owned the 2,000 bonds, and they were placed with Reed. (See page 266 of record.)

There is not a single word of testimony to show that the American Contracting Company ever had one bond of this company in its possession.

Under the contract between Southern Inland Navigation and Improvement Company, and trustees of Internal Improvement Fund, the contractors were entitled to the *proceeds of sales* of bonds, not to bonds.

Hence, it follows, none of these bonds were *issued* to a *bona fide* holder, except the fifty held by Hepburn.

The next proposition of appellees, the trustees, is that, because no interest had been paid on the bonds when Hepburn bought, he is not a *bona fide* holder.

The only bonds ever issued were these fifty held by Bennett from 1876 as *collateral;* of course, until they were sold, and the title to them passed to Hepburn, no demand was needed to be made for the interest, and no inquiry on this head was required of Hepburn up to 1876, the bonds not having been issued, no interest was due. It is true that Bennett's holding was *bona fide* for an actual loan of $15,000.00, and Hepburn, under every principle of law, succeeds to Bennett's *bona fide* holding, no matter if Hepburn had *actual* notice of fraud or wrong, which, in fact, he did not have, and which, in fact, did not exist.

The counsel for appellees here proceeds to state the proceedings had in the Vose suit, which, he contends, affected appellants, Bennett and Hepburn, and cancelled title of the company to this land.

In this recital he states that the lands vested in the trustees by act of 1855 were so vested as a trust to pay for the improvements *contemplated* by that act. These lands were to be sold on such terms and used for such purposes of drainage, cultivation and

improvement, as the trustees deemed for the best interests of the State, and in aid of such other internal improvements as the legislature might thereafter designate.

Again, it is stated by appellees' counsel, that Vose charged in his bill that the Southern I. Nav. and I. Co. was one of the corporations to whom the trustees were improperly conveying land. An examination of that allegation of Vose's bill will show that he charged that on 28th of July, 1868, the trustees, *by resolution of that date*, attempted to secure to the said Southern Inland Navigation and Improvement Company forty thousand acres, or thereabouts, of the trust lands. No charge is made as to how or why this is a misapplication of the fund; no prayer is made asking relief as to any such lands; no description, save by the date of the resolution, is given of the lands meant, and, as stated in appellant's brief, this was not the date of the concession of the land conveyed to this company that they afterwards conveyed to Union Trust Company. How then was this allegation a notice of any contention by Vose that the deed or concession to this company of the lands deeded to appellant was in fraud of anybody's rights?

It is stated in appellees' brief that in 1874 Gleason *filed* a sworn petition admitting this deed to S. I. Nav. and I. Co. was cancelled, &c. No such petition was filed in 1874, nor is there any evidence of same.

It is stated in trustees' answer that such a petition was filed, but the date is not given; and what purports to be a copy of same is annexed to the answer. But no date is given in this exhibit,—this allegation of the answer not being responsive to the bill, is not

evidence, and if it were it amounts to nothing; but Gleason's *opinion* of the *effect of decree* of December *4th*, 1873, in *which we say he was mistaken*,— certainly so as to appellant and *its cestui que* trust. Gleason did swear that he had the original deed to his company, and he produced and filed it in evidence in this case. (See page 100 of Record.)

Counsel for appellees seeks to argue that Bennett and Hepburn must have known of the Vose proceedings. *We* have Bennett's sworn testimony directly to the contrary. (See page 93 of Record.)

Here this unimpeached witness swears he not only had no such notice, but took advice of counsel, and was advised that the title was good in Union Trust Company.

We come now to the most remarkable proposition in appellees' brief, that *Bennett* and Hepburn *had* notice by reason of trustees, *possession* of this land. What an absurdity to speak of any such possession of 1,360,000 acres of land as to give notice of claim of title thereto! The trustees may have attempted to make deeds of some of it, as any stranger may of any other person's land, that such stranger has no claim of title to. This argument is not worthy of further notice.

Appellees insist there was notice by *lis pen dens;* this we deny on the grounds set out in original brief, and there fully discussed.

We were not parties to the suit, and the land was not brought into the suit in such manner as to give notice; and our title was acquired before the plead-

ing mentioning the title of Company (under which we claim) was ever filed.

Appellees contend further that the date of Bennett and Hepburn's acquiring these bonds is the date for testing the *lis pen dens*; that it is not true in so far as *title to the real estate*, upon which the bonds are secured, is concerned; the validity of that title must be tested by the condition of such title at time *it was executed* to Union Trust Company; otherwise the anomaly would be presented of a good title in the trustee, yet not good or of any avail as to his *cestui que trust*. How can the title be perfect in the trustees and invalid as to the *cestui que trust*?

Appellees say, in this connection: "We are here to test the title to land conceded to have passed back to the Internal Improvement Fund." We distinctly assert no such concession has ever been made. We have everywhere, at all times, and in every manner denied that after the deed of February 10th, 1871, this land ever was a part of the said Improvement Fund.

The main burthen of the song of our opponents is the great waste of the trustees in making the deed of February 10th, 1871, and that Vose's suit and injunction was to prevent such waste. Therefore, the deed was a violation of the injunction. To support this idea, counsel for appellees continually dwells upon the small price in coupons paid for this vast area, &c.

There was no waste in the making of this deed. It was a proper and legitimate donation of this land to a proper and legitimate public improvement, sanctioned by the legislature of Florida.

The consideration of $56,000.00 was the smallest part of the consideration of this deed. The deed recites in the beginning thereof, that said trustees grant the land under an act of General Assembly of State of Florida, entitled "act to encourage system of internal improvements, &c., of 1855, and an act to organize the Southern Inland Navigation and Improvement Company." It was the terms and purposes of these acts that gave rise to this deed; and who shall conserve the interests of the people of Florida better than their own legislature? (See p. 7 of record.)

The trustees justified their action in making this deed, not solely on the ground that they had contracted to do so and received the purchase money, but also because of these acts of the legislature and the public improvement to aid which the land was deeded. (See page 194 of record.)

But, says appellees' solicitor, although they had made the concession of this land by resolution, and although they had received the purchase money, still it was a violation of the injunction, because otherwise if improper trustees, prior to suit, might make contracts injurious to this *cestui que trust*, under this argument they could dispose of the whole fund, &c. This is no answer. It simply amounts to saying: "If the people of Florida chose certain trustees, and clothed them with ample powers of sale and disposition of lands, and such trustees made contracts and received purchase-money, which they ought not, then, because great loss is to follow carrying out the contract, these trustees must repudiate their con-

tracts, and those who contracted with them must lose their lands and their purchase-money. If the trustees had power to make the contracts and concessions, no injunction issued *after* the contracts were made could affect them on the ground of improper *use of power merely*. Appellees confuse abuses of power with a want of power.

Appellees cite in confirmation of their view that this deed was a waste, a resolution of the legislature of Florida, of February 12th, 1870, as to a sale of lands to Pensacola and Louisville R. R. Co. There is no analogy or connection here between the deed of February 10th, 1871, to Southern Inland Navigation and Improvement Co. and this sale to Pensacola and Louisville R. R. Co.

They are for entirely different purposes; the one was in pursuance of an act of the Legislature, the other was not; one was a drainage scheme the other was not; in one case the *six cents* an acre was the only consideration; in the other the great public purpose to be served was the main object of the deed. So that this resolution of February 10th, 1870, is of no use in ascertaining the propriety of deed of February 10th, 1871.

As to the argument that the present trustees are not estopped by the former trustees' action in making this deed, all that appellees' counsel has to say in answer is, that our authorities do not sustain the position. Surely no authority is needed to establish the doctrine that privies in estate are estopped to contest and deny the rights of others who hold or claim by virtue of sealed instruments of record from those under whom such privies claim title also. Our

citations in the original brief from Bigelow on Estoppel, amply sustain this position and the cases cited.

As to the effect of the certificates given by the trustees, appellees say they were given by only three trustees, and that there were *six* trustees. This is not true. There were only *five* (5) trustees, and the action of the three, being a majority, bound the trustees and their successors.

Again, it is contended, the trustees had no power to make such certificates. They were the custodians of the records showing the title to these public lands, as any other custodian of a public record. This power to give certificates of the status of that record and what it contains, is inherent in their office, and needs no special authority to give such power.

But it made no difference whether they had power or not to give such certificates. Any person claiming title to land, who asserts that another has the title, is estopped afterwards from setting up his own title against one who has acted on the faith of such person's former declaration of title in another.

Again, the laws of Florida make the deeds and certificates of these officers evidence. (See × × .)

We say the law of estoppel does apply directly to these appellees who but succeeded to the title of their predecessors, who made this deed, defended and guaranteed it.

Appellees seek to avoid the force of our position, that appellant was not a party to Vose's proceeding,

and is not bound by saying, that it is not the status of appellant, but of Bennett and Hepburn which settles this question. This position, we have shown, is not sound; and, further, there is nothing in this record showing that Bennett or Hepburn were parties to this Vose suit, or had any notice of it.

Appellees are again in error as to the lands affected by the Vose suit, in such manner, as to create *lis pendens*. General reference to *all* lands of the trust, &c., is not sufficient, and in this case where a different lot of lands (as land conceded by resolution of July 28, 1868), are specially ~~recorded~~ referred to, all others deeded or conceded to this company are excluded from the operation of the bill. (See *Miller* vs. *Shaw*, 2 Wall., 237).

Again, only such conveyance or donations as were a waste or were contrary to the act of 1855, were covered by the general language of the bill. This deed, we have shown, was not a waste and not contrary to act of 1855, but was in strict accordance with it.

The attempted answer to our position that we had no notice of anybody's rights but Vose, is that to award Vose his rights, it was necessary to cancel these deeds and declare title, so as to fix Vose's lien.

This is incorrect. If Vose had a prior statutory lien under Act of 1855, these concessions to these companies were *subject* to his first lien.

All the Vose litigation was notice of, was his claim, his debt, and his lien. When he and like first mortgage creditors were disposed of, all that was necessary for the purposes of the suit had been accomplished.

Besides, the record showed plenty of lands besides this, enough to more than satisfy Vose's claim.

In construing the language of the decree of December 4th, 1873, counsel for appellees omits all consideration of the first clause of the decree by which the record must be construed.

The language of the first clause is, that "the contracts or agreements entered into by the trustees, &c., with corporation known as Southern Inland Navigation and Improvement Company be rescinded, and same are hereby declared to be null and void, and the lands undertaken to be conveyed, or contracted to be conveyed, shall be restored to said Inland Improvement Fund, &c." If it had been intended by this decree to cancel a deed, why did it not say so *in the cancelling clause?* What the decree means, is that any lands undertaken (in the sense of agreed) or contracted to be conveyed *by the contracts or agreements* just ordered in the first clause cancelled, be restored to the fund; otherwise this last clause as to restoring lands standing alone does not make sense or mean anything.

As we have shown, in our original brief, this is the interpretation given in this language by Mr. Vose himself in his petitions, and the interpretation given it by the court in other decrees in this case; and these were "*contracts* and *agreements*" which this decree did operate on, and as to those contracts and the lands therein mentioned the *status* was restored, and those lands were restored; and it was as necessary to *restore them* to the fund as it would be to restore to the fund lands described *in a deed;* there-

fore, the agreement that "restoring to the fund" means lands covered by a deed amounts to nothing.

If the court in first clause of this decree used the words *contracts or agreements*, both meaning the same thing, why is it to be supposed the court did not intend to use language meaning the same thing when it says "undertaken to be conveyed, or contracted to be conveyed," in the last clause?

It must be borne in mind of the 2,000,000 acres, 1,360,000 had been already conveyed by deed executed while the remaining 640,000 acres were "contracted to be conveyed," but had never been conveyed, and to these latter lands the decree refers.

The appellees seek to answer our position that the balance of the lands in this deed, after paying Vose, is liable to our debt, by saying our authorities do not apply, and that the court, as a conservator of the public interests, cancelled these sales as to all parties on public policy, &c.

A court never speaks or acts except when called upon by some one entitled to demand relief at its hands, and then only for his aid or those in like situation.

A court is not the forum, in this sort of suit, to call public officials to account for improper official action. The people of Florida had never asked the guardianship of Vose or the court. They selected these trustees, they gave them their powers, and these trustees, as to their obligations to the people of Florida and their public acts, were accountable to them. If they wanted to dispose of these trustees they could impeach them, indict and try them, or repeal the act

giving them such powers, and transfer them to other trustees.

Vose could only complain of injury done himself, and obtain relief for himself, and decrees, upon matters as they affected him; when he was satisfied this was all accomplished.

The declaration of the court that a sale by the trustees was improper could only be as it affected the party seeking relief, and certainly could not be as to the general public in such sense as to destroy a title for the benefit of the public, when the public was not asking any such relief of the court.

The *succeeding trustees must have taken some action of their own to cancel this deed*, in order to give a cancellation such effect as counsel for appellees contends for in this case.

This decree, if given the effect sought to be given it by appellees, the present trustees, is not merely a declaration as to the proper manner of conducting a trust which subsequent trustees must follow, it is, as said above, a wiping out of a title; it is affirmative action, not a direction to trustees, and the principle that a decree of cancellation at suit of a creditor is satisfied and ceases to have any force after such creditor is paid does refer directly to this case.

The last ground urged by appellees is that appellant's action was barred by laches.

The only relief asked in this case was the foreclosure of a mortgage to secure bonds, which fall due in 1904, and on their face are not yet due. There was an election with the bond-holder when he would consider and treat the principal as due for non-pay-

ment of interest, and compensation to sinking fund. This is not a case of stale claim. We are not seeking to set aside any other sales or titles, or to receive decrees in the technical sense of the ~~record~~ term; all the proceedings on which this matter will be tried are matters of record.

There is no place for application of the doctrines or authorities cited to these points by appellees.

These lands were never by any official action restored to the trustees; they never had any actual possession of them. If the trustees have attempted to sell a part of them, every buyer bought with record notice of our deed and mortgage and subject thereto, and cannot complain of same when we seek to foreclose it.

While Bennett held the bonds he held them as a collateral, and was under no obligation to commence proceedings to foreclose or enforce them until they matured.

Hepburn demanded payment of interest as soon as he got the bonds, and on failure to get same, immediately commenced this suit.

There is no laches or stale claim here.

We submit the above as a reply to brief of appellees, the trustees, of the Inland Improvement Fund of Florida.

WILLIAM FULLERTON,
J. C. COOPER,
Appellant's Solicitors.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 176.

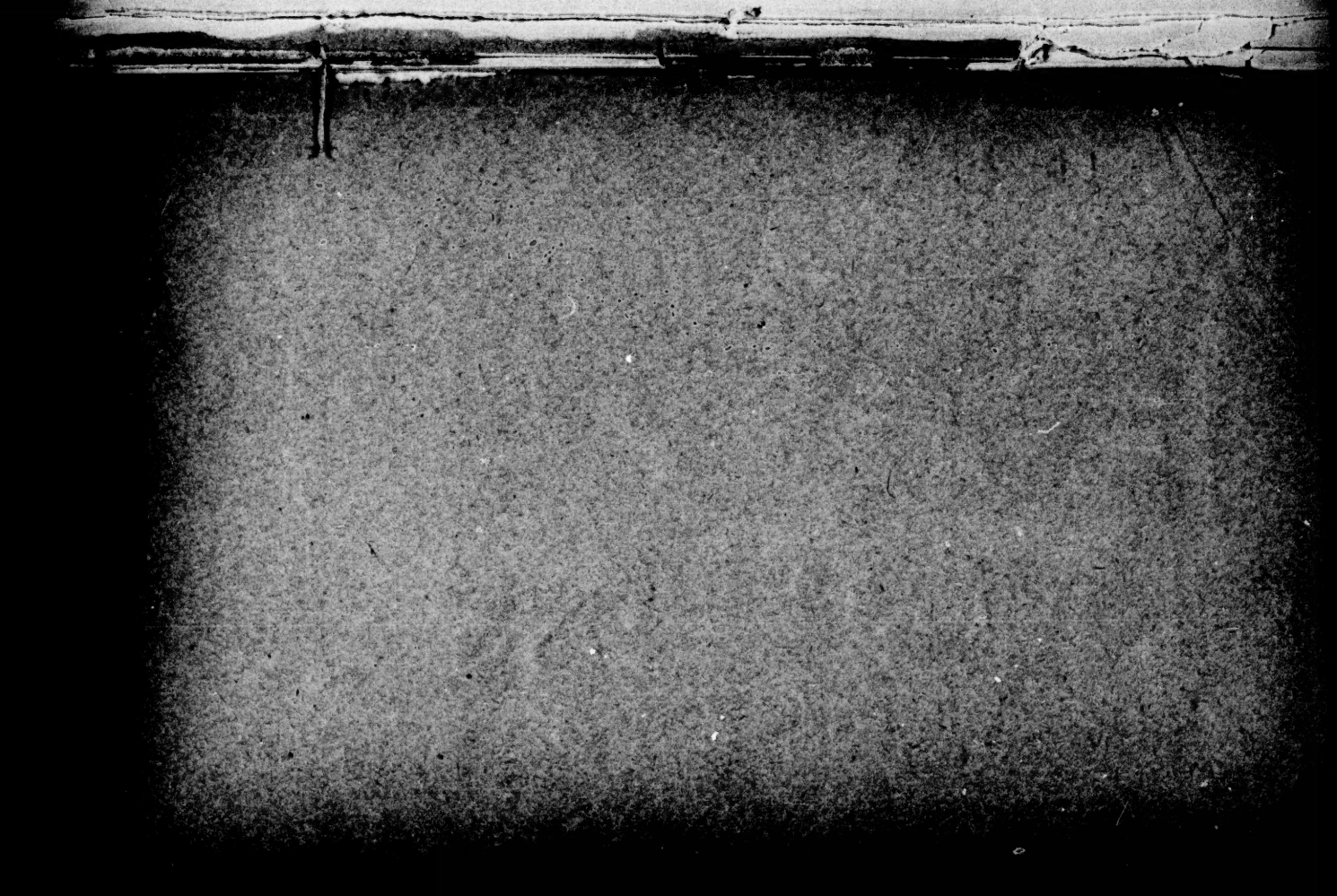
JOHN SYNNOTT, AND JOSEPH M. BURKETT, ADMINISTRATOR OF PETER WELCH, DECEASED, APPELLANTS,

vs.

MICHAEL SHAUGHNESSY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF IDAHO.

FILED OCTOBER 21, 1885.



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1 *Petition for Appeal to Sup. C't U. S.*

In the Supreme Court of the Territory of Idaho.

JOHN SYNNOTT and JOSEPH M. BURKETT, Administrator of the Estate of Peter Welch, Deceased, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

Petition for appeal.

To the honorable the supreme court of the Territory of Idaho:

Your petitioners, John Synnott and Joseph M. Burkett, administrator of the estate of Peter Welch, deceased, plaintiffs and appellants in the above-entitled action, represent to the court that the petitioners desire to appeal to the Supreme Court of the United States from the judgment and decree of the said supreme court of the Territory of Idaho made and entered in this cause on the second day of March, A. D. 1885, and from the whole and every part thereof; wherefore the said petitioners pray for an allowance of said appeal, and that the amount of the bond to be executed to the said Michael Shaughnessy, defendant, may be fixed as required by law; and they further
2 pray that the decision of the said supreme court herein, together with the record herein, may be sent to the said Supreme Court of the United States, to the end that the same may be there examined and justice done as said Court may order and decree.

ANGEL & SULLIVAN,
Attorneys for Plaintiffs & Appellants.
SUTHERLAND & McBRIDE, *Counsel.*

(Endorsed:) In supreme court, Idaho Territory. John Synnott *et al. vs.* M. Shaughnessy. Petition for appeal. Filed Sept. 7th, 1885. A. L. Richardson, clerk.

3 *Allowance of Appeal to Sup. C't U. S.*

UNITED STATES OF AMERICA, *ss:*

JOHN SYNNOTT and JOSEPH M. BURKETT, Administrator of the Estate of Peter Welch, Deceased, Appellant-,

vs.

MICHAEL SHAUGHNESSY, Appellee.

The President of the United States to the honorable the supreme court of the Territory of Idaho, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment and decree of a cause which is in the said supreme court, between John Synnott and Joseph M. Burkett, administrator of the estate of Peter Welch, deceased, plaintiffs and appellants, and Michael Shaughnessy, defendant and respondent, a manifest error

happened, to the great damage and grievance of the said plaintiffs and appellants, as by their petition appears, we, being willing that error, if any hath been, should be duly corrected and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,
4 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday, the 12th day, of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the errors alleged what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 16th day of August, in the year of our Lord one thousand eight hundred and eighty-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

JAMES B. HAYS,
Chief Justice of the Supreme Court of Idaho Territory.

Date, Aug. 31, 1885.

5 (Endorsed:) In supreme court Idaho Territory. John Synnott *et al. vs.* Michael Shaughnessy. Allowance of appeal to Sup. Court U. S. Filed Sept. 7th, 1885. A. L. Richardson, clerk.

6 *Citation.*

In the Supreme Court of the Territory of Idaho.

JOHN SYNNOTT and JOSEPH M. BURKETT, as Administrator of the Estate of Peter Welch, Deceased, Appellants,

vs.

MICHAEL SHAUGHNESSY, Appellee.

The supreme court of the Territory of Idaho to Michael Shaughnessy:

Whereas John Synnott and Joseph M. Burkett, as administrator of the estate of Peter Welch, deceased, have lately appealed to the Supreme Court of the United States from a judgment and decision lately rendered in the supreme court in the Territory of Idaho, made in favor of you, the said Michael Shaughnessy, and have filed the security required by law: You are therefore cited to appear before the said Supreme Court, at the city of Washington, on the 12th day of October (being the second Monday of October next), 1885, to do and receive what may appertain to justice to be done in the premises.

7 Given under my hand, in the Territory of Idaho, the 31st day of August, in the year of our Lord one thousand eight hundred and eighty-five.

JAMES B. HAYS,
Chief Justice.

Service admitted by copy this the 3rd day of September, 1885.
ROSBOROUGH & MERRITT,
Attorneys for Defendant.

(Endorsed:) In supreme court Idaho Territory. John Synnott *et al. vs.* Michael Shaughnessy. Citation. Filed Sept. 7th, 1885. A. L. Richardson, clerk.

8 *Complaint.*

In the District Court of the Second Judicial District of the Territory of Idaho in and for the County of Alturas.

JOHN SYNNOTT and PETER WELSH, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

And now come John Synnott and Peter Welsh, the plaintiffs in this action, and complaining against Michael Shaughnessy, the above-named defendant, and for cause of action herein, allege and respectfully show to the court—

I.

That heretofore, to wit, on the 5th day of July, 1881, these plaintiffs were the owners each of an undivided one-half and in the lawful possession of the following-described mining ground claim and property, situated, lying, and being in Mineral Hill mining district, county of Alturas, Territory of Idaho, to wit: All of the "Eureka" mining claim, consisting of fifteen hundred feet in length by six hundred feet in width, situated in Mineral Hill mining district, said county and Territory. Said claim is bounded on the south-
9 east by the "Idahoan" mine and on the northwest by the "Homestake" mine; that said claim and mining property was located by these plaintiffs on the — day of June, 1880, and from the time of said location to the said 5th day of July, 1881, these plaintiffs had been in the possession thereof, working and developing the same, and had run four tunnels on said claim—one about 20 feet, one about 30 feet, one about 50 feet, and one about 70 feet—and had discovered a small seam or vein of galena ore in two of said tunnels, said ore so uncovered not exceeding in value the sum of one thousand dollars.

That said discovery of ore was at that time and up to the time of the execution and delivery of the deed hereinafter mentioned was all of the ore which had been discovered by these plaintiffs upon said mining claim or either of them, and these plaintiffs were wholly

ignorant of the existence of any other vein or body of ore than that so discovered by them as aforesaid; that at said time these plaintiffs verily believed that all the value that then was attached to said claim was that which the discovery made by them as aforesaid and the indications in the openings upon said claim, consisting chiefly of the tunnels aforesaid, and the location of said claim gave it, and verily believed that from said showing of ore and indications on said claim, so far as known to these plaintiffs, the same was worth the sum of twenty-five hundred dollars or thereabouts.

That on about the 3rd day of July, 1881, the defendant, by his agents and employees, had discovered upon a part of said "Eureka" mining claim remote from the places where these plaintiffs had been at work on said claim a large and valuable vein or body of ore, from eighteen inches to four feet in thickness, extending for about seventy feet continuously along said vein, the existence of which rendered said mine of great value, to wit, the sum of one hundred thousand dollars and upwards, of the existence of which said vein or body of ore these plaintiffs were wholly ignorant.

That said ore consists principally of lead and silver and is chiefly valuable for said metals contained therein, and is worth, over and above the expenses of mining, transportation, and reduction thereof, from fifty to seventy-five dollars per ton as plaintiffs are informed and verily believe.

And these plaintiffs further show that the said defendant, by his agents and servants aforesaid, conspiring, contriving, and intending to cheat and defraud these plaintiffs, did fraudulently and falsely conceal and suppress from these plaintiffs the knowledge of the existence of said vein or ore body, and did misrepresent to these plaintiffs the facts concerning the same, and fraudulently and falsely represented and stated to these plaintiffs that no other ore body or vein of ore existed in said mining claim except such as were found by and known to these plaintiffs as aforesaid; that such false and fraudulent statements as aforesaid were made by said defendant, his agent and employees, in order to enable said defendant to purchase said mining claim from these plaintiffs at a price far below its real value, and to induce these plaintiffs to sell said claim to him for the sum of two thousand two hundred dollars; and these plaintiffs, by means of such false and fraudulent concealment and misrepresentation on the part of said defendant, his agents, servants, and employees, and believing the same to be true, were made to believe and by means thereof did believe, that no such body or vein of ore existed in said claim as really did exist and was known to said defendant, his agents, servants, and employees as aforesaid, and that the real value of said claim was not at that time more than $2,200; whereas in truth and in fact, by reason of the existence of said large vein or body of ore, which was known to the defendant and unknown to these plaintiffs, the said Eureka mining claim was then and is now worth one hundred thousand dollars and upwards, as these plaintiffs are informed and verily believe.

That immediately prior to the discovery of said ore vein or ore body by the said defendant these plaintiffs had employed one Henry Porter as an agent to find for them a purchaser of said "Eureka" mining claim at the sum of two thousand five hundred dollars, and, relying upon said agent and believing that he would act and was acting honestly in their behalf in said matter, these plaintiffs promised and undertook and agreed to pay said Porter ten per cent. of the purchase-money of said mine, which should be received by them in case he, said Porter, should make or cause to be made a sale thereof for these plaintiffs at the price aforesaid.

That during such employment of said Porter and while he was endeavoring to obtain a purchaser for said mine as aforesaid
13 he, the said Porter, first made the discovery of said ore vein and ore body aforesaid, which was unknown to these plaintiffs.

That upon such discovery the said Porter concealed the same from these plaintiffs, but surreptitiously, falsely, and collusively and for a consideration paid to him by the defendant, which consideration these plaintiffs aver, upon information and belief, to have been the sum of one thousand dollars, informed the said defendant of the existence of said large vein or ore body, and then and there, in violation of his said employment by these plaintiffs and in fraud of their rights, entered into the employment of the defendant and undertook and agreed to assist him in concealing from the plaintiffs the knowledge of the existence of said ore body, and in obtaining the said "Eureka" mining claim from these plaintiffs by purchase at the price of two thousand two hundred dollars, or a price greatly below its real value, and by reason of the said false, fraudulent, and collusive acts of the said Porter, as well as the misrepresentations and concealments of the defendant as aforesaid, and not otherwise, these plaintiffs were induced to part with said
14 property for said sum of two thousand two hundred dollars, and to execute and deliver to said defendant, Michael Shaughnessy, a quitclaim deed of said "Eureka" mining claim, dated on the 5th day of July, 1881, and acknowledged before W. T. Riley, a notary public, on the 6th day of July, 1881, and recorded on the 8th day of July, 1881, in the office of the recorder of Alturas county, in volume H of Deeds, on page 328; that by reason of said conveyance, fraudulently obtained from these plaintiffs as aforesaid, and if said conveyance be not declared fraudulent, null, and void, and set aside by the decree of this court, these plaintiffs will sustain great pecuniary loss and damage, to wit, the sum of one hundred thousand dollars.

And these plaintiffs further show that since the said conveyance by these plaintiffs to the said defendant of said Eureka mining claim the said defendant has been in the possession of the same and has extracted and taken from said mine and claim a large quantity of ore of great value over and above the cost of extracting, shipping, and smelting the same, but the plaintiffs are unable to state the exact amount extracted or the net value of the same after deducting the expenses of extracting, shipping, and smelting

15 the same, but aver, upon information and belief, that the defendant has made large profits thereby, to wit, the sum of three thousand dollars and upwards; and these plaintiffs further aver that they are ready and willing and hereby offer to repay to said defendant the said sum of two thousand two hundred dollars, with interest from July 5th, 1881, purchase-money aforesaid of said Eureka mining claim paid to them by the defendant as aforesaid, upon a reconveyance of said mining property to plaintiffs.

Wherefore these plaintiffs pray the judgment and decree of this court—

1st. That said deed from these plaintiffs to the said defendant, Michael Shaughnessy, dated July 5th, 1881, and recorded July 8th, 1881, in the office of the county recorder of Alturas county, in Book H of Deeds, on page 328, be decreed and declared to be fraudulent, null, and void, and that the same be annulled and set aside, and that said defendant be adjudged and decreed to reconvey said "Eureka" mining claim and premises to these plaintiffs upon the plaintiffs paying to the said defendant the sum of two thousand two hundred dollars and lawful interest thereon from the 5th day of July, 1881.

16 2nd. That the defendant be decreed to account to these plaintiffs for the net proceeds of the ore extracted by the defendants from the said Eureka mining claim since the 5th day of July, 1881, and, upon such accounting, that defendant be decreed to pay the said plaintiffs the net proceeds of said ore.

3rd. That the defendant, his agents, servants, and employees, be forever enjoined and restrained from interfering with said Eureka mining claim or extracting or carrying away any of the ore therefrom.

4th. That the plaintiffs be put in possession of said Eureka mining claim and every part thereof by the process of this court.

5th. That the defendant be adjudged and decreed to pay the costs and disbursements of this action; and—

6th. For such other and further relief or order, or both, in the premises as to the court shall seem meet and in accordance with the principles of equity.

TEXAS ANGEL,
ISAAC N. SULLIVAN,
Att'ys for Pl'ff.

17 TERRITORY OF IDAHO, } ss:
County of Alturas, }

John Synnott, being duly sworn, on his oath says that he is one of the plaintiffs in the above-entitled action; that he has heard read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and that as to those matters he believes it to be true.

JOHN SYNNOTT.

Subscribed and sworn to before me this 24th day of May, 1882.
[SEAL.] CHAS. W. JONES,
Notary Public.

18 (Endorsed:) In second dist. court, Alturas county, Idaho Territory. John Synnott and Peter Welsh, pl'ffs, *vs.* Michael Shaughnessy, def't. Complaint. Filed May 24, 1882. A. L Richardson, clerk, by Geo. W. Richards, deputy. Texas Angel, J. N. Sullivan, pl'ffs' att'ys.

19 *Answer.*

TERRITORY OF IDAHO, *County of Alturas:*

In the District Court, 2nd Judicial District.

JOHN SYNNOTT and PETER WELSH, Plaintiffs,

vs.

MICHAEL SHAUNESSY, Defendant.

Said defendant, answering the complaint herein, denies that at the date of said sale and deed said plaintiffs believed that said mining claim was worth $2,500, but avers, upon his information and belief, that they had frequently endeavored to sell it for less, and on the day of said sale were glad to sell it for $2,000 until they were offered a few dollars more, for which they violated their agreement to sell at that price; and denies that about the 3rd day of July, 1881, or at any time before he became the owner of said mining claim, this defendant, by his agents or employees, or otherwise, had discovered upon a part of said mining claim remote from the places where said plaintiffs had been at work thereon or at any place on said mining claim a large or valuable or any vein or body of ore whatever; and denies that this defendant, by his agents or
20 servants, or otherwise, ever discovered or knew of any vein or body of ore upon said mining claim before he became the owner thereof, outside of plaintiffs' said excavations.

This defendant denies that, by his agents or servants, or by any agent or servant, or otherwise, he ever conspired or contrived or intended to cheat or defraud plaintiffs, or that he, with such intent, or otherwise, fraudulently or falsely or otherwise concealed or suppressed from said plaintiffs the knowledge or any knowledge of the existence of said alleged vein or body of ore or of any vein or body of ore in said mining claim, or misrepresented to them the facts or any fact concerning the same, or falsely or fraudulently or otherwise represented or stated to them that no other ore body or vein of ore existed in said mining claim, except such as were found by and known to them; and denies that such or any false or fraudulent statement or statements were made by this defendant, by any agent or employee of his, or otherwise, in order to enable this defendant to purchase said mining claim from said plaintiffs at a price below its real value, or to induce them to sell it for $2,200; but this defendant, on the contrary, alleges that said plaintiffs had ample
21 means of ascertaining and knowing the value of said mining claim, and did not rely, and were not induced or entitled to rely, upon this defendant or any agent of his for any information or knowledge concerning the same, and that this defendant did not

have the same or any means of knowledge concerning the same beyond the location and superficial aspect of said mining claim.

This defendant denies that by such alleged or by any concealment or misrepresentation on the part of this defendant or any of his agents, servants, or employees in respect to said mining claim said plaintiffs were made to believe that no such alleged body or vein of ore existed in said mining claim, or that the real value of said mining claim at that time was not more than $2,200; but, on the contrary, this defendant avers, upon his information and belief, that at the time of said sale and for a long time prior thereto said plaintiffs were and had been in person upon said mining claim working or pretending to work the same, and if they failed to work it to any profit or to develop any body of ore unknown to them, or to know the value of said mining claim, the fact was due to their own
22 neglect and laziness and not to any truth in the scandalous averment in their complaint; and this defendant denies that at the time of said sale the existence of said alleged large body of ore or of any large body or vein of ore in said mining claim was known to him.

The defendant, upon his information and belief, denies that immediately prior to the alleged discovery of said vein or body of ore or at any time said plaintiffs had employed said Porter as an agent to find for them a purchaser of said mining claim at $2,500 or at any other price, or promised or undertook or agreed to pay him ten per cent. of the purchase-money received by them on any sale effected by him at that price; but this defendant avers, upon his information and belief, that said plaintiffs had given to said Porter a verbal option of purchase of said mining claim within thirty days for $2,000, and had agreed to allow him all purchase-money over that sum upon any sale he might effect within that time.

Said defendant denies that during said alleged employment of said Porter or at any time before said sale said Porter made the discovery of said alleged ore vein or ore body or of any ore vein
23 or ore body in said mining claim unknown to said plaintiffs, or thereupon or in anywise concealed the same or any vein or body of ore from said plaintiffs, or surreptitiously or fraudulently or collusively or otherwise, or for any consideration paid to him by this defendant, informed this defendant of the existence of said alleged large vein or ore body in said mining claim; and denies that said Porter then or there or at any other time, in violation of his said alleged employment by said plaintiffs or in fraud of their rights or otherwise, entered into the employment of this defendant, or undertook or agreed to assist him in concealing from said plaintiffs the knowledge of the existence of said alleged ore body, or in obtaining said mining claim for $2,200 or at any price; and denies that by said alleged or any false, fraudulent, or collusive acts of said Porter, or by any misrepresentations or concealment by this defendant, said plaintiffs were induced to part with or sell said property for $2,200, or for any price, or to execute or deliver said deed therefor; and denies that by reason of said conveyance uncancelled said

plaintiffs will suffer damage in the sum of $100,000 or
24 any damage whatever, but alleges that said plaintiffs, with ample and exclusive means of knowing the value thereof and relying upon their own judgment, received on said sale the full value of said mining claim in the market in its then condition and $200 more than they had agreed to sell it for a few hours before.

This defendant denies that he has made large profits in the sum of $3,000 or any profits whatever so far from ore extracted from said mining claim, but avers that he has expended a large amount of money in developing the same, and that whatever value beyond a mere prospect said mining claim now has is due solely to the developments made by such expenditure since said sale.

For further answer this defendant alleges that he had no knowledge whatever of said sale or of the negotiations leading thereto until after the same was made; that a few days thereafter he received a letter from E. A. Wall, who had procured said quitclaim deed on his own motion and without any directions to do so so from this defendant, together with said deed, in which letter he
25 requested this defendant, in case he did not choose to accept the deed, to transfer the same to another person in Salt Lake City, who stood ready to take the property & pay the price; that this defendant, being free to accept or reject such deed, elected to accept the same, and did so, paying the purchase-money and taking the chances, as he had done in many other purchases of mines.

This defendant, upon his information and belief, acquired and formed since said sale, allege- that the facts & circumstances of said sale are as follows: Said Wall, learning that said mining claim was for sale, went to look over it; found some small fragments of float thereon from sources not then apparent or known; saw that the said claim was well located in alignment with a known neighboring claim, but made no excavations on said Eureka claim and did not discover or see any lode or vein thereon other than such then prospects as appeared in excavations which plaintiffs had made and were working in; that he then and there entered into negotiations with said plaintiffs for the purchase of said claim and bought the same for the sum of $2,000, but when plaintiffs came to
26 execute a deed pursuant to such bargain they refused to comply with their contract of sale because they had, in the meantime, been offered $200 more by another party, and said Wall thereupon made & consummated another contract of purchase for $2,200, received said deed, and drew check on defendant for the purchase-money; that said examinations of the said mine and said negotiation and deed were all made on one and the same day; that the only services said Porter performed in said transaction was to inform said Wall that said mining claim was for sale and to show him the claim; that if there was any other agreement or relation between said Porter and said plaintiffs than the aforesaid option and agreement for surplus of purchase-money the same is and was then unknown to said Wall; that said Wall made said purchase on his own judgment and not from any opinion or discovery of said Porter,

and was not even influenced by the representations made by said plaintiffs that the claim was of great value.

This defendant does not deny that since the expenditure of large sums of money by him has developed said mining claim into a mine of greater value said plaintiffs are willing to repur-
27 chase for the same price; but, having bought and paid for the property in good faith, he declines the offer of the money and all further dealings with said plaintiffs on their terms.

Wherefore this defendant demands judgment against said plaintiffs for his costs.

ROSBOROUGH & MERRITT,
Attorneys for said Defendant.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

Michael Shaughnessy, being duly sworn, declares that he is the defendant in the above-entitled action; that he has heard the foregoing answer read and understands it, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

MICHAEL SHAUGHNESSY.

Subscribed and sworn to before me this 7th day of September, A. D. 1882.

[SEAL.] CHRISTOPHER DIEHL,
Commissioner of Deeds for the Territory of Idaho in the Territory of Utah.

28 (Endorsed:) Synnott & Welsh *v.* M. Shaughnessy. Answer. Filed Sept. 9, 1882. A. L. Richardson, clerk, by Geo. W. Richards, deputy clerk.

Service by copy by hands of Geo. W. Richards, deputy clerk, admitted.
Sept. 11, 1882.

TEXAS ANGEL & I. N. SULLIVAN,
Att'ys for Pl'ff.
ROSBOROUGH & MERRITT,
Att'ys for Def't.

29 *Decree.*

TERRITORY OF IDAHO, *County of Alturas:*

In the District Court, 2nd Judicial District.

JOHN SYNNOTT and J. M. BURKETT, Adm's. of Peter Welch, Dec'd, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

This cause having been heard upon the pleadings and the evidence upon the part of the respective parties and argument of th r

counsel and submitted to the court, and the court having fully considered all and singular the premises, now, at this day, said cause came on for further proceeding. In consideration of the premises it is ordered, adjudged, and decreed that the plaintiffs' complaint be, and the same is hereby, dismissed, and that the defendant, Michael Shaughnessy have and recover of and from the plaintiffs, John Synnott and Joseph M. Burkett, his costs and disbursements in this behalf incurred, taxed at $85.50, and that execution issue therefor.

H. E. PRICKETT,
District Judge.

30 (Endorsed:) John Synnott *et al. vs.* Michael Shaughnessy. Decree. Filed July 16th, 1884. A. L. Richardson, clerk.

31 *District Court Findings.*

TERRITORY OF IDAHO, *County of Alturas:*

In the District Court, 2nd Judicial District.

JOHN SYNNOTT and J. M. BURKETT, Adm's. of Peter Welsh, Dec., Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

This cause having heretofore been heard upon the pleadings and proofs of the respective parties and the arguments of their counsel and submitted to the court for consideration, and the court, having fully considered all and singular the premises, now at this day file its findings of fact established by the evidence and conclusions of law thereupon.

From the evidence adduced on the trial the court doth find the following facts:

1st.

About the month of June, 1880, the plaintiff, John Synnott, and his late coplaintiff, Peter Welsh, dec'd, discovered and located the mining claim and lode known as the "Eureka," the subject of this suit, and entered into the possession of and worked and held
32 the same until the sale hereinafter mentioned. In the interval they built a cabin in the vicinity of the claim and excavated four tunnels on the premises, in two of which they discovered ore, which they did not remove from the premises, but left chiefly in place.

2nd.

Some time in the month of June, 1881, Synnott & Welsh proposed to E. H. Porter that if he would find a purchaser of the mining claim at the price of $2,500 they would allow him a commission of ten per cent. out of such purchase-money, to which proposal Porter replied that he was then engaged in negotiating for a sale of the "Homestake" (a neighboring mining claim), and that as

soon as he got through with the business he would endeavor to find a purchaser of the "Eureka" claim on those terms; but Porter was not invested with any authority to effectuate a sale or bind Synnott & Welsh or the title to the mine by any contract.

3rd.

Pursuant to this proposal Porter applied first to John Gilman and entered into negotiat*ing* with him for the purpose of inducing him to purchase the Eureka claim on the terms proposed,
33 but the offer made by Gilman was not satisfactory to the owners. Pending the negotiations, Porter applied to E. A. Wall (who afterwards acted as the agent of the defendant Shaughnessy in making a purchase of the claim) on the morning of the 5th July, 1881, to induce him to purchase the claim, informing Wall that he had a verbal option of purchase at the price of $2,000; that his terms would be a commission of $500, or one-fourth of the claim, if Wall should purchase the claim. Porter in the same interview stated to Wall that he thought he could show him something on the claim that would induce him to buy it. Wall replied that he would agree to the terms if he liked the claim after inspection well enough to buy it, but at this stage Porter disclosed the fact that he had a further appointment with Gilman to resume negotiations with him. Wall broke off negotiations and declined to have any further conference or make any terms for the purchase as long as any other negotiations with Gilman should continue.

4th.

Porter next met Gilman on the "Eureka" mining claim, pursuant to appointment. They inspected the claim together. Porter showed Gilman float ore which he had discovered at two
34 places on the claim, one of which was on and about the path which Synnott & Welch had usually travelled from their cabin to their work on the claim, and the other place was on a point about fifty yards from said path. After this inspection Gilman went immediately to Synnott & Welch & had further negotiations with them, but they failed to agree on any terms.

5th.

After their failure to sell to Gilman, Synnott & Welch had a further conference with Porter, in which they informed him that they were willing to sell the claim for $2,000, but in that case they could not afford to allow him any commission.

6th.

On the evening of the same day (July 5th, 1881) Porter again went to Wall and, it being understood that negotiations with Gilman were ended, they resumed negotiations as to the terms between them, the purchase price of $2,000 being named as that of Synnott & Welch. Pending this negotiation they went to and over the

Eureka claim and into two of the tunnels. Porter showed Wall the float ore he had found at the place aforesaid. Porter then
35 insisted on having one-fourth of the claim for his option & for showing the float ore. Wall informed him that if he bought the claim it would be for def't Shaughnessy, who might prefer to be sole owner, and proposed that if Porter would allow him ten days to decide he would either allow him one-fourth of the claim or pay him $1,000, to which Porter agreed, and at the end of that period and after the purchase the $1,000 was paid to Porter accordingly.

7th.

After their examination of the mining claim, which occupied in all about half an hour, Wall went with Porter to the cabin of Synnott & Welch and stated to them that Porter had informed them that the Eureka claim was for sale at $2,000, to which they assented. Wall then told them that he would buy it for that price for defendant, and that if they would come down to his office at Bullion & make out the deed after they got their supper he would pay them the money if they would take checks on the defendant, to which Synnott & Welch agreed. This interview lasted about ten minutes, and the parties parted — the understanding that the sale should be completed as aforesaid.

8th.

36 Shortly after this agreement had been made and Wall and Porter had left, Gilman returned and resumed negotiations with Synnott & Welch, and finally offered them $1,800 and one-tenth of the proceeds of the claim, or $2,200 in money for the whole. He then informed Synnott & Welch of the fact that Porter had found float ore on the claim. They did not agree on any terms.

9th.

Shortly after Gilman had made the new offer Porter had returned to the cabin of Synnott & Welch and the three went together down to Wall's office, and on the way they informed Porter of the offer of $2,200 by Gilman and intimated that they would expect the same from Wall, because they were poor and could not afford to lose this $200 nor pay any commission.

10th.

On their arrival at Wall's office Porter informed Wall of the new offer of $2,200 by Gilman and of the claim of Synnot & Welch for the additional price; whereupon Wall turned to Synnott & Welch and told them that he would pay them the $2,200, adding, with some asperity, that Gilman should not have the claim at any price.

11th.

37 The deed from Synnott & Welch to def't Shaughnessy for $2,200, dated July 5th, 1881, was then drawn, and was exe-

cuted by Synnott & Welch and attested by witnesses, and Wall drew two checks on the def't in favor of Synnott & Welch for the purchase-money, one for $1,200, due at once, and the other $1,000, payable at 30 days, and delivered the same to them; and it was agreed between them that Synnott & Welch should next day come down to Hailey & acknowledge the deed, which they did accordingly. One of the checks was cashed by them presently and they kept the other till some time in the ensuing fall or winter before cashing it.

12th.

The evidence in the case does not show or tend to show that Wall or Porter or any other person had discovered or knew of the existence of any vein or lode of ore in place on the Eureka mining claim, other than such as had been found by & was known to Synnott & Welch in their excavations at any time prior to the sale and execution of the deed.

13th.

In making the purchase of the claim Wall, as the agent of the defendant, dealt directly with the owners, Synnott & Welch, for
38 the price they demanded & received, and not with or through Porter, who had no authority to sell and convey.

14th.

No false or fraudulent representations concerning the Eureka mining claim *was* ever made to said vendors or to any one else by the defendant or by any agent or employee of his.

15th.

No concealment of any material fact concerning said mining claim was ever made by the defendant or by any agent or employee of his. Neither the defendant nor any agent of his had ever discovered or knew of the existence of any vein or lode in said claim (except such as Synnott & Welch had exposed by their tunnels) prior to the sale, nor until some days had elapsed after the sale.

16th.

Synnott & Welch, from their long familiarity with the claim, working on it, dwelling by it from June, 1880, till July, 1881, had better means and more ample opportunities of ascertaining and knowing the character and value of the claim than the defendant or any agent of defendant possessed.

39 17th.

Synnott & Welch were not induced to rely upon and did not rely upon any representations, opinion, or act of the defendant, or of any agent of defendant, concerning said mining claim in selling or disposing of the same or estimating its value or price. They were anxious to sell on account of the ill-health of Welsh; had worked

the claim for more than a year without profit, and had endeavored to sell it to several other persons before the negotiations with Gilman. The only statement or expression of opinion on the part of Wall or any agent of defendant in all the testimony in the case appears in the testimony of plaintiff Synnott, as follows: "I remarked to Wall that I thought I had made a mistake in running my tunnel; that if I had run it more to the left I thought I would have struck the ledge." Wall said, "If I had a ledge there the tunnel ought to have struck it." This could not be deemed the representation of a fact. It was about a matter concerning which knowledge in its proper sense could not be had, and at most it must be deemed as addressed to and received by Synnott & his partner as
40 the expression of an opinion merely; but this was after the price of the claim and the terms of sale had been agreed upon.

18th.

On the 6th July, 1881, the day after the sale, Porter did some work on the claim at one of the points where he had found float ore, and on the 7th July, 1881, Wall, as agent of the defendant, put miners at work on the point where float ore had been observed, and in the course of a few days, by an open cut 20 feet by 25 ft. in dimensions, discovered a body of ore in place, which, when taken out, weighed 23 tons and netted def't some $800.

19th.

The bodies of ore found and exposed by Synnott & Welch in their cuts and tunnels were taken out & sold by defendant and amounted in all to only three tons and netted only $30 per ton.

20th.

Further developments made in working said mining claim by defendant, at considerable outlay of money, after the purchase, have disclosed a large and valuable lode of ore in the claim, and about the time of the bringing of this suit the defendant had ne-
41 gotiations in progress for its sale at the price of $150,000. The defendant, up to the time of the trial, had expended about $23,000 in labor & improvements on the claim, and had realized from ores taken therefrom and sold about $3,000.

Conclusions of Law.

On consideration of the premises the court deduces the following conclusions of law from the facts established by the evidence:

1st. That the sale and purchase of the Eureka mining claim was fair and free from any ingredient of fraud.

2nd. That the plaintiffs have failed to show any grounds for the recession of the contract of sale.

3rd. That all the equities of the case are with the defendant, and that the bill of complaint ought to be dismissed at plaintiffs' cost.

Let decree be drawn accordingly.

H. E. PRICKETT,
District Judge.

(Endorsed:) John Synnott *et al. vs.* M. Shaughnessy. Findings. Filed July 16th, 1883. A. L. Richardson, clerk.

42 *Statement on Motion for New Trial.*

In the District Court, 2d Judicial District of Idaho Territory, for Alturas County.

JOHN SYNNOTT and JOSEPH M. BURKETT, Adm'r of the Estate of Peter Welch, Deceased, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

Statement on motion for new trial & on appeal.

This is an action to annul a contract for the sale of that certain mining claim described in pl'ffs' complaint herein filed, known and called the "Eureka," lying and being in Mineral Hill mining district, Alturas county, Idaho Territory, and to compel a reconveyance of the same to the vendors by the def't. The cause was regularly called for trial on the — day of ——, 1883, before the Honorable Henry E. Prickett, judge of said court, and the said defendant, having made his motion to substitute J. M. Burkett, county treasurer and *ex officio* public administrator of Alturas county, as adm'r of the estate of Peter Welch, on the affidavit — J. B. Rosborough hereto attached, and said motion coming on to be heard on the said affidavit and the papers hereto attached, marked, respectively, Exhibits "A," "B," "C," "D," "E," "F," "G," said papers
43 being copies of the said affidavit; the petition of Don McKay to the probate court of said county; order fixing time for the hearing of the same and directing the clerk of said court to give notice of the same by the publication of a notice in the Wood River News Miner; the affidavit of the printer of the publication of said notice, together with a copy of said notice; the affidavits of Don McKay and Owen Riley respecting the order of appointment by the probate court to William P. Parsons, as administrator of said Peter Welch; also a copy of the record of said probate court of said county appointing J. M. Burkett as such administrator, dated June 18, 1883; also letters of administration upon the estate of said Welch issued to said Burkett, dated June 18, 1883; also copy of the record of said probate court found on page 158 of said "docket" book of said court, and said papers are all the testimony upon which the court acted in passing on said motion.

Said motion was opposed by the counsel for pl'ffs on the ground that the said court of probate did not acquire any jurisdiction of said estate by the proceedings exhibited, and that said ap-
44 pointment of said J. M. Burkett was without authority of law and void, and that the substitution of said J. M. Burkett for said Peter Welch would be error in law. The court sustained the motion and said J. M. Burkett's name as administrator was substituted in this action for that of Peter Welch, one of the original plaintiffs herein.

To which order the pl'ffs' counsel excepted as error in law, and said exception was allowed by the court.

And afterwards, the cause being ready for trial and the parties appearing, by their counsel, to wit—the pl'ffs, by Texas Angel, I. N. Sullivan, and J. R. McBride, and the defendant, by J. B. Rosborough and Frank Ganahl—on the 27th day of June, A. D. 1883, before the said court, Hon. Henry E. Prickett, presiding, without a jury, the plaintiffs, to prove the issue on their part, called as a witness John Synnott, who, being duly sworn according to law, testified as follows: * * * . (Evidence omitted.)

45 *Assignment of Errors (Dist. Court).*

Specification of particulars in which the evidence is insufficient to sustain the findings and decision of the court and the errors upon which the pl'ff- will rely on the motion for new trial and on appeal therefrom and from the judgment.

1st.

The fourth finding of fact is not sustained by the evidence, in this: The last sentence of said finding, "that Gilman went immediately to Synnott & Welch and had further negotiations with them, but they failed to agree on any terms," is without evidence to support it and contrary to the evidence, which shows that Gilman, after he had gone up to the cañon and came back, went to the pl'ffs and made an offer, and was told that they had agreed to sell to him. The finding is further incorrect in stating that Porter showed Gilman float ore on or about the path as stated.

2nd.

The fifth finding is not supported by the evidence, in this: It then appears that the failure to sell to Gilman refer-ed to was the alleged abortive negotiation of July 5th, which never took place, whereas the failure to sell to Gilman, which led to a modification of the
46 contract with Porter, arose from the attempt to sell to Gilman made by Porter previous to July 5th, and had no connection with the attempt of Gilman to buy on that day after the time of the agreement with Wall.

3d.

The seventh finding is partial and incomplete of the facts. It omits to find what is proved by all the parties who were present at the negotiation between the pl'ffs and Wall, viz., that there was a conversation about the course a certain tunnel should have been run in order to strike the ledge; that nothing was said to Synnott & Welch about Porter having an interest in the property they were selling, nor of the "float ore" which Porter and Wall had just looked at, and the evidence does not sustain the finding that Wall said to the pl'ff- he would buy the claim if they would take checks on the

def't, to which they agreed. Wall is directly contradicted on this point, and the weight of the evidence is opposed to the finding.

4th.

The 8th finding is not sustained by the evidence, in this: "He (Gilman) then informed Synnott & Welch of the fact that Porter had found float ore on the claim" is not found from the evidence.
47 The evidence shows that Gilman stated that Porter said he found float on the claim, but he also added that he did not believe it, and if he got float there he believed he might have put it there.

5th.

The 12th finding of fact is against the evidence of all the witnesses—Wall, Porter, Synnott, Bradley, Richardson. While they differ about finding a solid vein, ore in place, &c., they concur in the fact of the discovery of a valuable body of ore, which was the inducement to buy by the defendant, and was unknown to and concealed from the pl'ffs at the date of the sale.

6th.

The 13th finding is not sustained by the evidence, in this: Wall did not deal directly with the owners; he made a provisional contract with the agent of the owners for its sale, by which he agreed to "protect" Porter's option, and his nominal contract with the owners was intended by him and the corrupted agent of the owners (Porter) as a blind or cover for the fraud concocted by the two to get the pl'ffs' property by improper means. Porter did have authority to sell and had informed Wall so, and there was nothing to do but obtain the conveyance from the pl'ffs. The negotia-
48 tions with pl'ffs as to price was a pretense to enable the def't and Porter the more effectually to secure an advantage to which they were not entitled.

7th.

The 14th finding is against the evidence. Col. Wall, the def't's acknowledged agent, in purchasing the claim, mislead the pl'ff- at the time of the contract of sale by pretending to buy on the known aspects of the claim, as known to all the parties, when he was induced to purchase by the corrupt conduct of the pl'ffs' agent, Porter, who had knowledge of the existence of mineral on the claim unknown to the pl'ffs, which he communicated to def't's agent, the latter knowing that Porter's principals were not aware of the facts; that the purchase was consummated by a corrupt bargain between Porter and Wall (def't's agents) that Wall should buy directly of pl'ffs and either share the property with Porter as the price of his perfidy or give him $1,000 in cash.

The finding is further incorrect, in that when Wall knew that a certain tunnel, if run further to the left, "as asserted by Synnott, would have cut the vein;" with that knowledge, expressed the opinion *of*

the pl'ffs that if any vein was there the tunnel as run would
49 have cut it; also in denying, by manner and in words, at the time the $200 advance in price was agreed to, that there had been or was any new discovery of ore on the claim, although he well knew of it and had seen it. This finding is further incorrect, because by the contract between Wall and Porter the latter was employed to assist in "pushing the sale through," and did it by concealing knowledge which his duty required him to disclose.

8th.

The 15th finding is against the evidence. Material facts affecting the value of the claim were corruptly obtained from the agent of pl'ffs by the def't's agents, and the existence of a large and valuable ore body was known to the def't's agents at the time of sale under circumstances requiring disclosure to the pl'ffs prior to the sale, and the entire manner of its acquisition bears the stamp of fraud, deceit, and corruption practiced on def't's behalf to secure the purchase.

9th.

The 16th finding is on an immaterial issue tendered by the defendant, and is not sustained by the evidence. The evidence shows that the def't's "opportunities" of knowing the character and value of the claim were the same as the pl'ffs', and, in addition, def't's
50 agents corrupted the pl'ffs' employee and agent, and thus had personal, actual knowledge before the sale which the pl'ffs did not have or possess. The finding is misleading, immaterial, and incorrect.

10th.

The 17th finding is not supported, in this: Synnott & Wilch did rely on the opinion and representations of Wall that there was no mine at the point indicated by Synnott on July 5th, when he knew there was; they did rely on his representations at the making of the final agreement, at Bullion, that there had been no new find of ore on the claim, when def'ts agent, Wall, knew of its existence and yet secreted it. They were mislead by the def'ts having corrupted their advisor and confidential agent and paid him to conceal his knowledge, while def'ts took him into his employment and paid him for deceiving the pl'ffs into a contract of sale for def't's advantage.

The finding is also incorrect in not setting forth the alleged misrepresentations by Wall, at Bullion, on the 5th day of July, and in asserting that the one made at the camp was the only one; in finding that this latter statement was a matter of opinion. Wall's own statement shows that geologically he knew between what
51 beds of limestone the vein was, besides the actual demonstration of the whereabouts of it, which he had seen half an hour before. The finding that this "opinion was expressed after the sale had been agreed to" is against the evidence of all the parties, including Wall.

11th.

The 20th finding as to the amount expended up to the time of the trial is immaterial. The def't did not attempt to show that any large sum was expended on the claim before suit, and it does appear that if the mine had been worked with a view to profit as a mining claim large profits could have been realized.

52 *Errors in Law.*

1st.

The court erred in allowing James M. Burkett's name to be used in this action as a pl'ff for the reason assigned in the exceptions thereto in the record.

2nd.

The court erred in failing to find in the following material issues relevant in this action:

1st.

The court failed and neglected to find the value of the ore body discovered in the Eureka claim by Porter and shown by him to Wall and Gilman to induce the purchase of the claim, and which did induce the purchase of it in this case; nor did the court find as to the knowledge of its existence by the pl'ffs.

2nd.

The court failed to find that Porter did find any ore as alleged, and when, or, if any, what was its amount; what concealments, if any, were practiced by him upon the pl'ffs; what knowledge, if any, the def't or his agent had of these concealments; whether they asserted the price of the claim at the time of sale; what the def't paid the said Porter $1,000 for; what the contract was
53 between Porter and def't; upon all of which material issues there is a large mass of evidence.

3rd.

The findings of fact, so called, in the record are not findings of fact as required by law, but are an elaborate partial statement of such of the facts as support the defendant's theory of the case, mingled with argument, inference, and legal conclusions combined in the pretended findings. They are partial because, while they purport to state the substance of the testimony on each point, they contain in each instance only a portion of such testimony; and we apply this objection to each of the findings heretofore objected to.

6th.

We assign as error in law that the following findings not heretofore objected to are immaterial, viz:

The first findings: The facts were not in issue in the case.

The eleventh finding is not in any issue in the case.

The twelfth finding is (except as otherwise objected to) im-
54 material, in this, that it finds that neither Wall or Porter had previous to the sale of Eureka found any vein or lode of ore in place other than that known to the pl'ffs, whilst it is clearly established by all the testimony that an ore body sufficient to induce Wall to be anxious to purchase had been found and inspected by Wall and others. The substance of the plaintiffs' allegation, viz., a discovery of a new body of mineral, is not met by the finding nor responded to by it.

We also assign as error in law—

3rd. That the court erred in finding in favor of the defendant and against the prayer of the plaintiffs.

ANGEL & SULLIVAN AND
JNO. R. McBRIDE,
Pl'ffs' Att'ys.

To Rosbrough & Merritt & Frank Ganahl, att'ys for def't:

You will take notice that the pl'ffs have filed the foregoing prepared statement in the above-entitled action, and we truly certify that the same contains all the evidence given at the trial of said action, and also the specifications of errors and grounds for new trial upon which the pl'ffs will rely on the hearing of the motion for new trial, of which notice has been given, and upon any
55 appeal therefrom or from the judgment in this action. You will please notify us if the said statement is acceptable to you by certifying thereto as served or proposing such amendments as you deem necessary.

Yours respectfully,

ANGEL & SULLIVAN &
JNO. R. McBRIDE,
Pl'ffs' Att'ys.

Hailey, I. T., Sept. 4, 1883.

56 JOHN SYNNOTT and PETER WELSH
vs.
MICHAEL SHAUGHNESSY.

The motion of defendant to substitute J. M. Burkett, county treasurer and *ex officio* public administrator of Alturas county, as a plaintiff in this cause in lieu of Peter Welch, deceased, having been heard and considered, it is now ordered that said J. M. Burkett, county treasurer and public administrator as aforesaid, be, and he is hereby, substituted as a plaintiff in this action in place of said deceased plaintiff.

TERRITORY OF IDAHO, *County of Alturas:*

In the District Court, 2nd Judicial District.

JOHN SYNNOTT *et al.*, Pl'ff-, *vs.* MICHAEL SHAUGHNESSY, Def't.

The plaintiff- in said cause having proposed a statement on motion for a new trial therein, and the defendant having proposed amend-

ments thereto, and the same having been submitted to him on motion for settlement and having considered the same, the
57 foregoing statement is allowed and settled by me as correct, and the clerk is directed to file the same.

Dated October 24, 1883.

H. E. PRICKETT,
District Judge, 2nd Judicial District of Idaho Territory.

(Endorsed:) In the district court, second judicial district, Territory of Idaho, county of Alturas. John Synnott *et al.*, pl'ff-, *vs.* Michael Shaughnessy, def't. Statement on motion for new trial. Filed Oct. 24, 1883. A. L. Richardson, clerk.

58 *Order Denying Motion for New Trial.*

In the District Court of the Second Judicial District of Idaho Territory in and for Alturas County. October Term, 1883.

JOHN SYNNOTT *et al.*, Pl'ffs, *vs.* MICHAEL SHAUGHNESSY, Def't.

MONDAY, *October 29th*, 1883.

Present: Hon. H. E. Prickett, presiding judge.

The statement on motion for a new trial in this cause having been settled and filed, now at this day such motion is submitted, and the court having fully considered the premises, it is ordered that the said motion for a new trial on the part of said plaintiffs be, and the same is hereby, overruled and denied; to which ruling and decision the plaintiffs, by their counsel, then and there *accepted*.

59 *Notice of Appeal.*

In the District Court of the Second Judicial District of the Territory of Idaho.

JOHN SYNNOTT and J. M. BURKETT, Administrator of the Estate of Peter Welch, Deceased, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

Please take notice that the plaintiffs in the above-entitled action hereby appeal to the supreme court of the Territory of Idaho from a judgment made and entered herein on the 16th day of July, A. D. 1883, in favor of the defendant and against the plaintiffs and from the whole thereof, and from the order denying the plaintiffs motion for a new trial herein, made and entered on the 29th day of October, A. D. 1883, and from the whole thereof.

Yours, &c., J. R. McBRIDE,
ANGEL & SULLIVAN,
Att'ys for Pl'ff-.

Dated Dec. 27th, 1883.

60 To the clerk of said district court & to Rosborough & Merritt, attorneys for defendant.

(Endorsed:) In dist. court, 2nd jud. dist., Territory of Idaho. John Synnott *et al.*, pl'ff-, *vs.* Michael Shaughnessy, def't. Notice of appeal. Filed Dec. 27, 1883. A. L. Richardson, clerk, by E. E. Richards, deputy. J. R. McBride, Angel & Sullivan, att'ys for pl'ffs.

61 *Undertaking on Appeal.*

In the District Court of the Second Judicial District of the Territory of Idaho in and for the County of Alturas.

JOHN SYNNOTT & J. M. BURKETT, Administrator of the Estate of Peter Welch, Deceased, Plaintiffs,

vs.

MICHAEL SHAUGHNESSY, Defendant.

Whereas the plaintiffs in the above-entitled action are about to appeal to the supreme court of the Territory of Idaho from a judgment entered against them on the 16th day of July, A. D. 1883, in favor of the defendant in said action, and from the order denying the motion for a new trial therein on the part of the plaintiffs, made and entered in said action on the 29th day of October A. D. 1883, and from the whole thereof:

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, residents of the county of Alturas, Territory of Idaho, do hereby jointly and severally undertake and promise on the part of the appellants that the said appellants will pay all damages and costs which may be awarded against them
62 on the appeal or on a dismissal thereof, not exceeding three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

Dated this 31st day of December, 1883.

TEXAS ANGEL. [SEAL.]
C. P. CROY. [SEAL.]
OWEN RILEY. [SEAL.]

TERRITORY OF IDAHO, } ss:
County of Alturas, }

Texas Angel, C. P. Croy, and Owen Riley, being each for himself duly sworn, on his oath says that he is a resident and householder within the county of Alturas, Territory of Idaho, and is worth the sum of three hundred dollars over and above all his debts and liabilities and property by law exempt from execution.

TEXAS ANGEL.
C. P. CROY.
OWEN RILEY.

Subscribed and sworn to before me this 31st day of December, 1883.

[SEAL.]

JAS. H. BEATTY,
Notary Public.

(Endorsed:) In second dist. court, Idaho Territory, county of Alturas. John Synnott *et al.* pl'ffs, *vs.* Michael Shaughnessy,
63 def't. Undertaking on appeal to supreme court. Filed Dec. 31, 1883. A. L. Richardson, clerk, by Geo. W. Richards, deputy.

64 *Minutes of Sup. Court.*

In Supreme Court, Idaho Territory. January Term, 1885.

JOHN SYNNOTT *et al.*, Appellants,

vs.

MICHAEL SHAUGHNESSY, Respondent.

WEDNESDAY, *January* 14*th*, 1885.

Ordered that this cause be set for trial on Monday, the 19th inst.

JOHN SYNNOTT *et al.*, Pl'ffs & App'll'ts,

vs.

MICHAEL SHAUGHNESSY, Def't & Resp'd't.

TUESDAY, *February* 3*rd*, 1885.

By agreement of counsel for the respective parties, ordered that this cause be set for hearing on the 5th inst., at 2 o'clock p. m.

JOHN SYNNOTT *et al.*, Pl'ffs & App'll'ts,

vs.

MICHAEL SHAUGHNESSY, Def't & Resp'd't.

THURSDAY, *February* 5*th*, 1885.

Now, on this day, this cause came regularly on to be heard,
65 Messrs. Angel & Sullivan & Messrs. Sutherland & McBride appearing as counsel for app'll'ts and Messrs. Rosborough & Merritt and Messrs. Prickett & Lamb for the resp'd't. Texas Angel, Esqr., opened the argument on behalf of the appellants, pending which the court adjourned the further hearing of said cause until to-morrow, the 6th inst., at 10 o'clock a. m.

JOHN SYNNOTT *et al.*, Plaintiffs & Appellants,

vs.

MICHAEL SHAUGHNESSY, Defendant & Respondent.

FRIDAY, *February* 6*th*, 1885.

The argument of this cause, adjourned on yesterday for further hearing, was this day continued by Texas Angel, Esqr., on behalf of appellants, after which the court adjourned the further hearing of the same until to-morrow, the 7th inst., at 10 o'clock a. m.

JOHN SYNNOTT *et al.*, Plaintiff- & Appellant-,

vs.

MICHAEL SHAUGHNESSY, Defendant & Respondent.

SATURDAY, *February 7th*, 1885.

66 The argument of this cause, adjourned on yesterday for further hearing, was this day continued by Hon. Samuel A. Merritt and Hon. H. E. Prickett, on behalf of the respondent, after which the court adjourned the further hearing of said cause until Monday, the 9th inst., at 10 o'clock a. m.

JOHN SYNNOTT *et al.*, Pl'ff- & App'll'ts,

vs.

MICHAEL SHAUGHNESSY, Def't & Resp'd't.

MONDAY, *February 9th*, 1885.

The argument of this cause, adjourned on Saturday, the 7th inst., for further hearing, was this day concluded by J. G. Sutherland, Esqr., on behalf of appellants, and said cause was submitted and taken under advisement by the court.

On Appeal from the District Court of the 2nd Judicial District in and for Alturas County.

JOHN SYNNOTT *et al.*, Plaintiffs & Appellants,

vs.

MICHAEL SHAUGHNESSY, Defendant & Respondent.

MONDAY, *March 2nd*, 1885.

67 And now, at this day, this cause being called and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Chief Justice Morgan, Broderick, J., concurring & Buck, J., dissenting, to the effect that the judgment of the court below be affirmed.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the judgment of the district court of the second judicial district in and for said county of Alturas, in the above-entitled cause, be, and the same is hereby, affirmed, and, on motion of J. G. Sutherland, Esqr., of counsel for appellants, ordered that appellants have sixty days from this date in which to file petition for rehearing.

68 *Opinions. Filed March* 2, 1885.

Supreme Court of Idaho.

SYNNOTT and Others *v.* SHAUGHNESSY.

Principal and Agent—Sale of Mine—Agent as Purchaser.—If A and B own a mine and authorize C to sell it for them or bring them a purchaser at a fixed price, with the understanding that C is to have all he can get above that price, C may make the best bargain he can with any one; he may purchase it himself, and is under no obligation to disclose to A and B anything that he may have discovered concerning the mine after such arrangement is made.

Buck, J., dissenting.

Angell & Sullivan and Sutherland & McBride, for appellants.
Rosborough & Merritt and Prickett & Lamb, for respondents.

MORGAN, *C. J.:*

The cause was tried before the court at the June term, 1883, of the district court for Alturas county. Judgment was for the defendant and the complaint dismissed. Plaintiffs moved for a new trial, and the motion was denied. Plaintiffs appeal both from the judgment and from the order denying a new trial.

The case shows that on the fifth day of July, 1881, the plaintiffs were the owners and in the possession of the Eureka mine, situated in Mineral Hill mining district, in Alturas county, in the Territory of Idaho. On the said fifth day of July, 1881, the said defendant, by his agent, E. A. Wall, purchased the said mine from the plaintiffs, John Synnott and Peter Welch, for the sum of $2,200; that on the same day plaintiffs executed and delivered to the defendant a good and sufficient deed of conveyance. On the twenty-fourth day of May, 1882, the plaintiffs bring this action and ask the court to declare this deed fraudulent, null, and void, and set it aside and put the plaintiffs again in possession of said property. Plaintiffs aver—

First. That on the third day of July defendant, by his agents and employés, discovered on said Eureka claim a large and valuable vein or body of ore, from 18 inches to four feet in thickness, extending about seventy feet continuously along said vein, which rendered said claim of great value, to wit, of the value of one hundred thousand dollars.

Defendant denies.

Second. Plaintiffs aver that defendant, by his agents, fraudulently and falsely concealed the said vein or ore body from the plaintiffs.

Defendant denies.

Third. Plaintiffs aver that defendant, by his agents and servants, falsely and fraudulently represented and stated to these plaintiffs that no other ore body or vein of ore existed in said mining claim,

except such as were found by and known to these plaintiffs, as shown in their own tunnels as aforesaid, when defendant well knew, etc., that said vein did exist.

Defendant denies.

Fourth. Plaintiffs aver that said false and fraudulent representations were made by defendant's agents and servants to plaintiffs to induce them to sell said mining claim at far below its real value, to wit, for the sum of two thousand two hundred dollars, and that said false and fraudulent representations so made by the agents and servants of defendant did induce plaintiffs to believe that no such ore body existed, and that said mining claim was not worth more than $2,200, and that said plaintiffs were thus induced to sell and convey said claim for said last-mentioned sum, when, in fact, said claim was then worth one hundred thousand dollars.

Defendant denies.

Fifth. That immediately prior to the discovery of said ore vein or ore body the said plaintiffs had employed one Harry Porter, as agent, to find them a purchaser for said mining claim at the price of two thousand five hundred dollars, and that, relying upon the honesty of said agent, they agreed to give said Porter ten per cent. of said purchase price as a compensation.

Defendant denies.

Sixth. That while so employed the said Porter first made the discovery of said vein and ore body aforesaid, which was unknown to plaintiffs.

Defendant denies.

Seventh. That said Porter concealed the same from plaintiffs, and surreptitiously, fraudulently, and collusively, and for the consideration of one thousand dollars, informed the said defendant of the existence of said large vein or ore body, and undertook and agreed to conceal the same from plaintiffs and to assist said defendant in the purchase of said Eureka claim at two thousand dollars or a price greatly below its real value; that by such fraudulent acts of said Porter, as well as the misrepresentations and concealments, they were induced, etc.

Defendant denies.

These are all the material issues raised by the pleadings. Upon substantial affirmative proof of all the material averments of fraud on the part of either Wall, the agent of defendant, or on the part of Porter, alleged to be their own agent, plaintiffs claim the right to recover. If they have failed in both, the case fails. The principal errors assigned are (1) that the court has failed to find on all the material issues; (2) that the findings are not supported by the evidence; (3) that the findings do not support the judgment.

The first two propositions are so interwoven and intimately connected that they will be discussed together. The first material issue is, Did the defendant, by his agents and servants, on or about the third day of July, 1881, or before the sale, find a large and valuable vein or body of ore, from 18 inches to 4 feet in thickness, extending about 70 feet continuously along said vein, which rendered the mine of great value? In reply to this, the court, in its finding of fact No. 12, say:

69 "The evidence does not show or tend to show that Wall or Porter, or any other person, had discovered or knew of the existence of any vein or lode of ore in place on the Eureka mining claim, other than such as had been found by and was known to Synnott and Welch (the vendors) in their excavations at any time prior to the sale and execution of the deed."

Objection is made to the use of the words "the evidence does not show or tend to show." The fact that they had discovered the vein or lode of ore in question before the sale must be proven by the evidence. If the evidence does not show it, nor tend to show it, then, so far as the purposes of the trial go, they had not discovered it, nor did they know of its existence. No one would fail to understand fully the meaning of the court, which was that neither Wall nor Porter, nor any other person knew of the existence of the vein or body of ore described. We think the finding substantially met the issue presented. The statement of a fact in language such that men of ordinary knowledge, as well as those learned in law, would understand from it that the fact did or did not exist would seem to be sufficient. The statement is such that it leads us to the inevitable conclusion that the fact alleged did not exist. See People *v.* Hager, 52 Cal., 189; Coveny *v.* Hale, 49 Cal., 552; Emmal *v.* Webb, 36 Cal., 204. The fact itself, however, is positively stated in the last half of the fifteenth finding, which is as follows:

"Neither the defendant nor any agent of his had ever discovered or knew of the existence of any vein or lode in said claim (except such as Synnott and Welch had exposed by their tunnels) prior to the sale, nor until some days had elapsed after the sale."

This is a statement of fact, pure and simple, and completely meets the issue tendered. Objection is made to the use of the terms "vein or lode of ore in place" and "vein or lode." The words "vein," "lode," and "ledge" are used as synonymous terms in the common parlance of miners, in the laws of Congress, and in the decisions of courts in mining States and Territories. Section 2320, U. S. Rev. Laws, uses the terms as follows: "Veins or lodes of quartz or other rock in place bearing gold, silver," etc. Section 2322: "Locations made on any vein, lode, or ledge situated on the public domain," etc. Section 2323: "Where a tunnel is run for the development of a vein or a lode."

Mr. Justice Miller, of the United States circuit court for the district of Colorado, and Justice Hallett, sitting with him, in the case of Stevens *v.* Williams, 1 Morr. Min. Rep., 566, 573, clearly define what a vein, lode, or ledge is, as follows:

"In general, it may be said a lode or vein is a body of mineral or mineral body of rock within defined boundaries in the general mass of the mountains; nor does the fact that it is occasionally found in the general course of this vein or shoot in pockets deeper down into the earth or higher up affect its character as a vein, lode, or ledge."

This is a perfect definition of the terms "vein," "lode," and "ledge," as understood in mining countries, and also demonstrates the fact that the terms are synonymous; that the terms "vein" or "ore

body," as used in the complaint, mean and were intended by the pleader to mean the same as if the words "vein or lode of ore" in place of the words "vein or lode" had been used is abundantly indicated by the words which follow in the complaint, namely, that the defendant, etc., by his agents and employés, had, on third day of July, 1881, discovered on said Eureka mining claim, remote from where these plaintiffs had been at work, a large and valuable vein or body of ore, from 18 inches to 4 feet in thickness, extending for about 70 feet continuously along said vein.

The context clearly indicates that the pleader intended to allege that defendant had so discovered a vein or lode of ore in place, and did not mean by that pieces or float ore, however large or small they may have been, which had broken loose and become detached from the mother lode and floated down the hill, which is commonly, indeed universally, called "float" in the mining regions.

The meaning of the terms as used is further indicated by the allegation which follows, to wit, the existence of which rendered said mine of great value, to wit, of the sum of $100,000 and upwards, of the existence of which said vein or body of ore these plaintiffs were wholly ignorant. The pleader well knew that the discovery of float ore did not render the mine of such great value. The experience of men in mining regions teaches them that the discovery of "float" may lead to the ultimate discovery of a vein or lode of ore in place which would render the mine valuable. They have also learned by sore experience, and after the expenditure of large sums of money, that it frequently leads to the discovery of nothing of any value.

70 Further evidence that the pleader considered the words "vein or body of ore" synonymous, and, as used, were intended to mean the same thing, is found in the second clause of the complaint, where the terms are used interchangeably, as they allege that defendant represented that no other ore body or vein of ore existed, and further on in same clause, that no such body or vein of ore existed. Further on the pleader again returns to "vein or body of ore," clearly showing that the pleader himself considered the terms synonymous. These findings of fact are, we think, entirely responsive to the issue, and completely negative the allegation. Are these findings supported by the evidence?

Porter testifies that on Sunday before the fourth day of July, 1881, he was on the Eureka claim, and was going up the hill on the trail, and picked up a small piece of float, about half as big as a hen's egg, and found three or four more very small pieces. "I made no further search until the fifth of July (which was the day of the sale to Wall). I went up with John Gilman; did not then find any solid vein where it came from. I followed it up—that is, the float—and found one piece for Col. Wall about six inches through and eight inches long, about fifty feet from the trail. I did not think it made the claim more valuable to any large extent. If I had I should have bought it myself, as I was in condition so I could have bought it. That was all the workings, and what was found outside, altogether. There was no concealment of this float at all; it laid right there. I showed that float to John Gilman the same afternoon. I was trying

to get him to buy it. This was all the ore found by Wall or Porter, outside the tunnels of the owners, prior to the sale. He says that piece, 6 x 8, was the largest piece that was found. It was in open ground, nearly bare, and was in plain sight. These two places where I found this float were about 175 feet from the cabin of Synnott and Welch. I think I saw Mr. Welch walking over the same ground where the ore was before the sale."

Col. Wall testifies:

"The only evidence of a vein that I saw at any time previous to the purchase was small fragments of broken ore, which may have come from that vein or from any source, nor was there any ore that I saw at any point on the claim that was visible to any person, in place, in the vein or near the vein. In fact, there was no ore discovered in place in the vein at all until after several days' work had been done with a number of men; merely fragments of ore that had been detached from the lode and drifted down the hill. This work was all done after the purchase."

John Gilman swears he saw a few pieces of weather-beaten float; that Porter was with him; picked up a piece and showed him. "There had been no work done there; saw no excavation whatever; saw no vein at all."

This is substantially all the testimony there is as to defendant, his agent, Wall, or Porter, knowing anything about ore being found before the sale. It is evident it falls far short of sustaining the allegations as to discovering a vein or body of ore, and abundantly supports the findings 12 and 15 above quoted.

The second material averment is that defendant, by his agents and servants, fraudulently and falsely concealed the said vein or ore body from the plaintiffs. In response to this issue the court finds:

"No. 15. No concealment of any material fact concerning said mining claim was ever made by the defendant, or by any agent or employé of his. Neither the defendant nor any agent of his had ever discovered or knew of the existence of any vein or lode in said claim (except such as Synnott and Welch had exposed by their tunnels) prior to the sale, nor until some days had elapsed after the sale."

This finding is completely responsive to the issue made by the allegation, and is supported by the evidence as already demonstrated, as it needs no argument to show that the defendant or his agents could not conceal a vein or ore body which they had not discovered and of the existence of which they had no knowledge.

The third averment is that defendant, by his agents and servants, falsely and fraudulently represented to plaintiffs that no other ore body or vein of ore existed in said mining claim, except, etc., when defendant well knew it did so exist. In response the court say:

"Finding 14. No false or fraudulent representation concerning the Eureka mining claim was ever made to said vendors, or to any one else, by the defendant or by any agent or employé of his."

This finding being in response to the averment which assumed that defendant had discovered and knew of the existence of the said vein, which assumption not being supported by the evidence, it follows that this finding is so supported.

The first, second, and third averments having been found against the plaintiffs, the fourth averment is no longer an issue; but it is responded to in the seventeenth finding, which states that
71 Synnott and Welch were not induced to rely upon, and did not rely upon, any representation, opinion, or act of the defendant, or of any agent of defendant, concerning said mining claim, in selling or disposing of the same or estimating its value or price.

The fifth averment is that immediately prior to the discovery of said vein or ore body plaintiffs had employed one Harry Porter as agent to find them a purchaser for $2,500; that they would give him 10 per cent. of that sum as compensation; that he then discovered the ore body; that he agreed to conceal it for $1,000 from plaintiffs, and did conceal it from them, but showed it to defendant's agent, Wall, and agreed to assist Wall in purchasing the mine for a price greatly below its real value. The court below having found that no such ore body was ever discovered by Porter, Wall, or any one else, before the sale, and the evidence conclusively showing that such finding was correct, the whole question of discovery, fraudulent concealment, fraudulent representations concerning it, is finally disposed of. It remains to inquire whether Porter's receiving the $1,000 from Wall, the agent of defendant, in any way affected the validity of the sale.

The character of the arrangement between Porter and the plaintiffs is thus stated by Synnott and Porter in their testimony. Synnott states that he first told Porter that if he would find a purchaser at $2,500 they would give him 10 per cent. of the sum. Porter said he was trying to sell the Homestake. When he got through with that he would try to find a purchaser for the Eureka. This was about the twenty-fifth of June, 1881. He then comes down to the fifth day of July, 1881, the day on which the sale was made, and narrates the sale and conveyance as follows:

"Wall (agent of defendant) came to us on the fifth day of July and offered us $2,000 for the mine. After some consideration we agreed to take it, and it was arranged we should go to Bullion after supper and make the deed. Then Gilman came to us and offered us $1,800 and one-tenth of the mine, or $2,200 cash. Gilman then told us Porter had made a big find on the Eureka. I said, 'Where?' Gilman said, 'You walk over it,' pointing up the trail. I said I knew better; I did not believe it. In the evening, after supper, we went down to Wall's office. Porter told Wall that Gilman had again been to see them and offered them $200 more, and they said they could not afford to lose it. Wall then agreed to give us $2,200. We took it and made the deed."

Synnott then returns to the arrangement with Porter and says:

"It may have been in June we had tried to sell it. The least we ever offered to sell the mine for was $2,000. Whether that was in May or June I don't know."

"Question. When and how long was Porter in your employ? Answer. As I have stated, it was about the twenty-fifth of June; it may have been a few days after that that we spoke to Porter; that would be, perhaps, ten or twelve days until the sale was consummated.

"Q. Was he in your employ until the sale was made? A. We considered so. The sale was made on the fifth of July.

"Q. Do you say that he continued in your employment that long? A. I have stated how we employed Porter, and you will have to infer from that. We promised to give Porter ten per cent. on $2,500, and Mr. Porter told us he could not get but $1,800. We told him the least we could take was $2,000, and we could not afford to pay him anything out of that. That was the understanding between us until the time of the sale. He was to get nothing out of two thousand dollars. We could not afford to pay him anything. There was no other arrangement. The next thing we knew was Porter brought Col. Wall on the ground on the 5th. We did not consider we owed Porter anything out of the $2,200; never offered him anything, as we got the extra $200 through Gilman.

"Q. How do you make that out? Who caused you to make the sale? A. I suppose Porter; he made the sale, and we supposed he got the money from Col. Wall.

"Q. All that Porter did you considered a gratuity, for which he was entitled to no pay? A. He was entitled to no pay from us."

Porter, in his testimony, states:

"Synnott and Welch gave me a sort of verbal bond if I should sell the property at such a figure they would give me a certain amount. The arrangement was that they should give me all over two thousand dollars that I could get for the ground. That was in June, 1881; I think about the middle of June. I was to have whatever I could get over two thousand dollars. I was acquainted with the mine and its workings and the showing as to ore. I made efforts to sell the mine under this arrangement; made a sale to Col. Wall, the agent for Shaughnessy. The deed was made to Shaughnessy, I believe. Col. Wall went to them about it, and bought it from them; made the trade with them. I went and got Col. Wall to look at the property. I brought the parties together. I had stated the terms upon which the mine could be bought to Col. Wall. I took Wall to see the property and told him if he bought the property from them I wanted him to respect my option. He agreed to do it, and agreed to give me $1,000 for my option, or one-fourth of the mine. Question. State now, particularly, what was the agreement upon your part and upon the others in regard to that option or verbal bond. Answer. I was to have all I could get over two thousand dollars. They wanted to get two thousand dollars for the ground. They did not want me to sell the mine at two thousand dollars and then give me any ten per cent. They wanted two thousand dollars, and if they could get that they were satisfied, and I could have all over. There was no agreement between us that I should have a fixed per cent. on a fixed price."

72 This was all the testimony on the matter of the arrangement between Porter and the plaintiffs. This testimony indicates that there may have been, at one time, an arrangement that Porter was to find a purchaser at $2,500, and Porter to have 10 per cent. thereof, although Porter swears positively that there was not. The evidence was conflicting, and the court below finds that there

was such an arrangement, and that afterwards said arrangement was changed to what was termed a verbal option that Porter was to get the plaintiffs $2,000, and he to have all he could get over that sum. The precise time at which the first and last of these two arrangements were made is not stated by either Porter or Synnott. Porter testifies that the latter arrangement was made about the twenty-fifth of June, and was not changed afterwards. Synnott testifies that it might have been May or June. All the talk about this matter occurred before Wall went to look at the mine and before he had any conference with Porter, as appeared by the evidence. Porter brought the parties, Wall and plaintiffs, together and they made their own contract, Porter simply having before stated to Wall that their price was $2,000, and the parties made their own trade. The fact that Wall finally paid them $200 more than they had agreed to take does not change the relation between Porter and plaintiffs.

It is laid down as the law that if an agent act openly and with the consent of both owner and purchaser, he may contract for and receive a commission from both. Finerty *v.* Fritz, 1 Morr. Min. Rep., 439, and cases cited. And again, if the extent of the agency be merely to bring the parties together, and does not involve the duty of negotiating for either, the agent is termed a "middle-man," and may contract for and receive commission from both. Finerty *v.* Fritz, *Id.*, 440; Stewart *v.* Mather, 32 Wis., 344; Shepherd *v.* Hedden, 29 N. J. Law, 334; Herman *v.* Martineau, 1 Wis., 151. This is true also if each have agreed to pay the agent a commission, with or without the other's consent, if his duty is simply to bring the parties together. Whart. Com. Law Ag., § 337; Rupp *v.* Sampson, 16 Gray, 398; *In re* Owens, I. R., 7 Eq., 235, Va. Cas.; affirmed, *id.*, 424.

It is evident from the testimony of Wall, Porter, and Synnott, all the parties who had anything to do with the sale and conveyance of the mine on the fifth of July, that the trade was made under the last arrangement, as Synnott states that he "did not consider that Porter was to have anything from us; we expected he would get his pay from Wall. We never paid him anything; never offered him anything. Porter never demanded anything from plaintiffs. Wall promised to respect Porter's option. He did so, and paid him the $1,000 agreed upon." If this arrangement had been reduced to writing no one would question for a moment the perfect propriety of the arrangement. It would then have been a bond to sell and convey at a fixed price on the part of plaintiffs, and on the part of Porter it would have been an option to purchase at a fixed price. It was precisely what Porter termed it, a verbal option or verbal bond, and, when in writing, a very common method of undertaking to find a purchaser for a mine or to buy one. Would this option be less proper or less binding upon the parties if verbal instead of in writing? Clearly not. The only danger in such case would be the liability of the vendor to demand more and the liability of the purchaser to refuse to respect the option, the former of which occurred in this case. What was the obligation of Porter? It was evidently understood by plaintiffs that Porter would

get his pay from Wall. He was at perfect liberty to get all he could above $2,000. He could, with perfect propriety, become the purchaser himself.

This whole subject is discussed clearly and at length in case above cited, Finerty *v.* Fritz. In that case the bond was in writing. The court say:

"The bond in question was one of those ordinary title bonds so extensively employed in the mining regions of this State (Colorado), by means of which those desiring to speculate in mines before purchasing the same outright procure from the owners an option to buy, on payment of a stipulated price, within a fixed period of time; the obligor binds himself to execute a deed to the obligee on performance of the condition. No obligation is executed by the obligee. If the contract proves advantageous to the obligee he pays the purchase-money and receives a deed; otherwise he suffers the time for performance to lapse. * * * The obligee may contract a sale of the property on his own account and at any price he can obtain."

73 In this case Porter might have purchased the mine openly from Synnott and Welch for himself. The evidence clearly shows that Synnott and Welch fixed the price upon their own knowledge of the mine. They had worked upon it over a year; had run four tunnels in different places where they thought the showing good. They had opportunity to know, and believed they did know, more about the mine than any other person. They had been trying to sell it to different persons for some months, and had failed. The highest offer ever made them was that of Gilman, which was $2,200, and that was the day of the sale. The same amount was given them by Wall. It is just as apparent that Wall bought on his own judgment. He might have failed to find a vein, as plaintiffs had done. It is reasonable to suppose that Synnott and Welch had seen the same float themselves (except the larger piece), and did not regard it as indicating that the mine was of any more value on account of it. They manifested no interest in it when informed by Gilman. Synnott said he knew better. When Porter accepted the proposition of plaintiffs to sell for $2,000, with the expressed understanding that he was to have all he could get over that sum, he was then under no obligations to reveal anything he discovered to the plaintiffs. The equities in the case do not seem to be clearly with the plaintiffs, as the learned counsel contend. The plaintiffs sold the mine for $2,200, on the fifth of July. On the seventh, two days after, they knew, as Synnott testifies, that Porter was to get the $1,000 from Wall. A few days after that the vein was discovered. The plaintiffs were there and knew all these facts. The defendant proceeded with labor and skill for 10 months, employing a number of hands, until he has spent $25,000, including the purchase-money. He has sold all the ore taken out by plaintiffs, and all he took out himself in his workings, and realized $2,700. Plaintiffs then bring suit and ask that defendant be required to account to them for this $2,700; that they be allowed to return to defendant the $2,200 and receive

a deed for the mine. The cause of justice and good conscience is not apparent.

Judgment affirmed.

Broderick, J., concurred.

BUCK, *J.* (dissenting):

In the discussion of this question I shall not consider that branch of the case which is founded upon the law which requires the vendee not to mislead the vendor. While I have been unable to find any authorities that hold the words "ore body" are synonymous with or the equivalent of the words "lode," "vein," or "ledge," and therefore have some doubt as to whether the finding that no lode or vein of ore was known, or had been discovered, is responsive to the allegation that the defendant had discovered a lode or body of ore, yet I desire to pass by that matter, which may, perhaps, be more technical than practical, and consider that portion of the action which has its foundation in the law of agency.

The complaint alleges, among other things, that said Porter (after entering the employment of plaintiffs) surreptitiously, fraudulently, and collusively, for a consideration, to wit, $1,000, paid to him by the defendant, in violation of his said employment of these plaintiffs and in fraud of their rights, entered into the employment of the defendant, and undertook and agreed to assist him (the defendant) in obtaining the Eureka mining claims from these plaintiffs by purchase at a price of $2,200, or at a price greatly below its real value, and that by reason of said false, fraudulent, and collusive acts of Porter and the misrepresentations and concealments of defendant the plaintiffs were induced to part with the property in question.

I presume it will be admitted that if this allegation is true the plaintiffs are entitled to the relief demanded in the complaint. This seems to me to be the more comprehensive and the most important branch of the case. The large ore body has, in the progress of the trial of the case, as is usual, attracted the most attention; but the gravamen of the action, it seems to me, lies in this charge of betrayed confidence, which may be true, even if, as a matter of fact, no ore vein had ever existed within the mine. This branch of the case makes the relation of Mr. Porter to the plaintiffs and defendant a vital issue. That issue is: Was he an agent of plaintiffs? If not an agent, was he a principal contracting with the plaintiffs for the purchasing — the mine? If not an agent of plaintiffs, was he an agent of defendant? If not an agent of defendant, was he a party in interest with the defendant? If not, was he, then, the agent of both plaintiffs and defendant; and, if so, was he a factor, broker, or middle-man? The law of the case is different in the several relations, and cannot be determined until this relation is adjudicated. The plaintiffs have a right to demand a finding of fact determining this matter. I am unable to find such a one in the decision of the case by the court below.

74 The second alleged finding of facts details a conversation between plaintiffs and Porter, whereby a proposition of em-

ployment is tendered by plaintiffs and responded to by Porter, and closes with the finding as a fact "that Porter was not invested with any authority to effectuate a sale or bind the plaintiffs or the title to the mine." The vital question, however—Did he have any authority, and, if so, what was it?—is not determined.

The fifth alleged finding of facts states that plaintiffs informed Porter that they would sell the mine at $2,000, but that out of said sum they could pay no commission; but there is no finding, there or elsewhere, as to whether Porter agreed to act as their agent in selling it at that price, or whether he agreed to buy it.

The findings are so indefinite that different minds arrive at different conclusions as to what was the relation of the parties.

Again, looking into the evidence for the purpose of ascertaining whether the finding that Porter was not invested with authority to sell or to bind the mine, it seems that all the evidence on that point is directly at variance with the finding. In determining the authority of Porter, on the theory that he was employed by plaintiffs, we must look at what he was employed to do and not what he did under the employment. Synnott, one of the plaintiffs, testified (Transcript, p. 68): "I told Porter if he would sell the Eureka for $2,500 we would give him ten per cent. Porter replied if he got through trying to sell the Homesake he would try and sell ours." Again, Synnott says: "I told him I would give ten per cent. if he sold the mine," etc. Again, Porter himself says (Transcript, p. 60): "Synnott and Welch gave me a sort of verbal bond if I would sell the property," etc. He adds, "I made a sale to Wall." On page 64 of Transcript Porter says: "They told me if I could sell for them and bring them $2,000, that was all they asked." On page 63 he says: "I had authority to sell the mine from about the middle of June. I made sale of it on the fifth of July." It is claimed that it appears from what he did that he had no authority to sell. But the charge is that he did not do as he had agreed to do, and it would be a dangerous practice if on such a charge we should determine that he was authorized to do by what he actually did. I am unable to see that this finding of fact is supported by the evidence; it seems rather to be directly contrary to the evidence of the contracting parties.

If I understand the opinion of the majority of the court, just read, it is based upon the theory that the findings are sufficient to show that Mr. Porter had a contract or verbal agreement with plaintiffs whereby he had what is sometimes called an option to sell, and that under said authority he had a right to sell and to appropriate to himself all that he might get over $2,000. The words of the parties are that he is to sell. Nothing is said of an option. Porter says that he called it a verbal bond. I am unable so to construe their contract. The stipulation that he was to have all over $2,000 if he should sell (if such there was) was simply the measure of his compensation. It could not alter his relations to the plaintiffs or his obligations to them. Assuming the findings to show such a contract, I am unable to see that Porter stood in any other relation than agent of plaintiffs. If I understand the nature of the contract,

often made by miners, which is referred to as bonding a mine, it is an agreement between two principals to the effect that one will sell to the other at a stipulated price within a given time. In Finerty *v.* Fritz, cited in the opinion of the court, such a contract is held to be a sale. The agreement between plaintiffs was not such a bonding, for Porter himself testifies that (Transcript, 64) "I never made a bargain to buy the property or an arrangement to buy it." On page 78 of Transcript he says: "They or I could have made a sale at any time." If words are to be interpreted according to their ordinary import, Porter was employed to assist plaintiffs to sell the mine—first at a compensation of 10 per cent. on the purchase price if sold; afterwards, desiring to increase his compensation, he told the plaintiffs he could only sell the mine for $1,800. This was not true. He in fact did sell it for $3,200. He however, as Synnott testifies, left them with the impression that he could not do better up to the time of the sale. The plaintiffs did, indeed, get $2,200 in consequence of a third party, Gilman, offering them that amount. By chance they protected themselves to that amount against the duplicity of their own employé. Through the representation of Porter that he could not sell for more than $1,800, and being greatly in need of money, the plaintiffs were induced to agree to take $2,000. This agreement, however, did not relieve Porter of his obligation as an agent to deal honestly with his principals and give them all the knowledge that he possessed concerning the value of the mine. He testifies that he concealed the find for the reason that had they known of it they would not have sold for that price.

75 Again, it is claimed that if the findings show employment of Porter by plaintiffs he was simply a middle-man to bring the parties together, and that he could lawfully take pay from either. I understand the authorities to be that, while a middle-man may sometimes take pay from both seller and purchaser, he must always deal with the utmost fairness with each. An analysis of the term affords the best explanation of the legal obligations of the parties: A man standing in the middle between two; in the center. Center is defined to be a point equally distant from the extremities. The middle-man must be and remain equally removed in interest from the two for whom he contracts. If he varies from this, even in the estimation of a hair, and gives to one knowledge or advantage which he withholds from the other, he loses his position as a middle-man, and, in the realm of equity, the law will hold him responsible for the position which he really assumes, rather than that which he advertises to occupy. Can it be said that Mr. Porter stands equidistant between the plaintiffs and defendant, when he testifies (Transcript, pp. 64, 65) that "I did not inform the plaintiffs of the fact of my finding ore. I reported it to Col. Wall." And again, "I told Col. Wall I wanted one-fourth of the mine;" and that he actually received $1,000 in lieu of the quarter interest therein?

In Walker *v.* Osgood, 98 Mass., 351, Wells, J., says:

"Plaintiff's employment as a broker, even if he had no authority to bind his principal, and was intrusted with no discretion in fixing the terms of exchange, and his only service was to bring the parties

together, he was bound to perform that service in the interest of the party who employed him."

To a certain extent, and for certain purposes, by the understanding and usage of business and the nature of his employment, a broker is authorized to act for both parties; but what he does in any relation he does as an indifferent person, and not in the interest of either party. It is claimed on the part of the appellants that there is no finding as to the fraud of defendant or his collusion with Porter.

In Harris *v.* Burns, 51 Cal., 528, the court say if the trial court fail to find on an issue of fraud raised the judgment will be reversed.

In Le Clert *v.* Oullahan, 52 Cal., 254, the court says: "Upon the issue of fraud thus tendered the findings are entirely silent. The cause is not, therefore, in a condition to be decided." In the case at bar it is claimed that if there is no direct finding as to fraud such probative facts are found as necessarily determine the question of fraud. If this is true, it must be that it does so by alleging all the facts, circumstances, and acts of the parties connected with the transaction in any way bearing upon the question of fraud. But an analysis of the findings will show that, while they set out as facts the conversation of the parties as to the contract of the parties, the evidence of Porter bearing on this question is entirely omitted. He says (page 64, Transcript): "I did not inform plaintiffs about the finding of the ore for the reason that I did not think it to be to my interest. I was working for my own interest, and not theirs." Also the evidence of Mr. Synnott (Transcript, p. 100): "Porter told us the most he could get was $1,800. That was the understanding between us until the sale."

If Porter was in the employment of plaintiffs he had no right to work for his own interest, and not theirs. If there was fraud, it arose from this very working for his own interest, to the injury of his employers; and if defendant was in collusion with this working for his own interest, instead of his employers', the fraud attaches to him also; hence the defect in the findings upon the question of fraud.

In Norris *v.* Taylor, 49 Ill., 17, and reported in 1 Morr. Min. Rep., 383, is a case so nearly like the one at bar that it seems to me to determine this controversy, provided the findings should establish the facts. The principles involved in this case are fully discussed. Whether they do apply, or what principles of law apply to the case at bar, can only be determined when the issues of fact in the case are adjudicated. The question of the agency of Porter, the question of fraud of Porter, and the collusion of the defendant in such fraud, if any existed, are the vital issues upon that branch of the case which I am discussing. I am unable to understand the findings of the court below as determining these issues, and I am therefore obliged to dissent from the opinion of the court as just read.

76 *Undertaking on Appeal to Sup. C't U. S.*

In the Supreme Court of the Territory of Idaho.

JOHN SYNNOTT and JOSEPH M. BURKETT, Administrator of the Estate of Peter Welch, Deceased, Appellants,

vs.

MICHAEL SHAUGHNESSY, Defendant.

Undertaking on appeal.

Know all men by these presents that we, C. P. Croy and E. Cramer, of the county of Alturas and Territory of Idaho, are held and firmly bound unto Michael Shaughnessy, of Salt Lake City, Utah, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Michael Shaughnessy, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such — whereas lately in a suit depending in the Supreme Court of the Territory of Idaho, wherein John Synnott and Joseph M. Burkett, administrator of the estate of Peter Welch, deceased, were plaintiffs and appellants and
77 said Michael Shaughnessy was defendant and respondent, a judgment and decree was made and entered on the second day of March, 1885, against said appellants and in favor of said Shaughnessy, respondent; that said action be dismissed and that said Shaughnessy recover his costs therein, to wit, $—— from said appellants; and the said appellants having taken an appeal from said judgment and decree to the Supreme Court of the United States to reverse the same:

Now, if the said appellants, John Synnott and Joseph M. Burkett, administrator as aforesaid, shall make good the said appeal and reverse the said judgment or decree, or shall pay to said appellee such judgment for costs and damages as shall be awarded to him by said court on the affirmation thereof, then this obligation shall be void; otherwise shall be and remain in full force and effect.

In witness whereof we have hereunto set our hands and seals this the 26th day of August, A. D. 1885.

C. P. CROY. [SEAL.]
E. CRAMER. [SEAL.]

TERRITORY OF IDAHO, } ss:
County of Alturas, }

C. P. Croy and E. Cramer, being severally duly sworn, each for himself says that he is surety to the above undertaking,
78 and that he is a resident and freeholder within the Territory, and is worth five hundred ($500) dollars, the sum in the said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

C. P. CROY.
E. CRAMER.

Subscribed and sworn to before me this 26th day of August, A. D. 1885.

[SEAL.] GEO. GARBUTT,
Notary Public.

I hereby certify that the foregoing obligors are well known to me, and that the said undertaking is good and sufficient and said appeal is allowed.

Aug. 31, 1885.

JAMES B. HAYS,
Chief Justice of Idaho Territory.

(Endorsed:) In Supreme court Idaho Territory. John Synnott *et al. vs.* Michael Shaughnessy. Undertaking on appeal to Sup. C't of United States. Filed Sept. 7th, 1885. A. L. Richardson, clerk.

79 Upon the foregoing record on appeal to the Supreme Court of the United States the said appellants hereby assign the following errors:

Assignment of Errors (Sup. C't).

First.

The court erred in the order substituting J. M. Burkett, administrator, as a party plaintiff against the objection of plaintiff.

Second.

The court erred in failing to make any findings on the following material issues:

It did not find as to the value of the ore body discovered in the Eureka mining claim by Porter, and by him shown to Wall at the time the purchase was made by the latter for the defendant.

It did not find as to the knowledge of the existence and extent of said ore body by Wall (def't's agent) at the date of the contract of purchase made by him of plaintiffs for the defendant.

The court failed to find whether Porter (the alleged agent of the plaintiffs) did discover any ore body as alleged; or, if so, when or what was its value or extent; what concealments were practiced by him upon the plaintiffs, if any; what knowledge defendant or his agent had of these concealments; whether plaintiffs were offered or received the value of the claim at the time of the alleged
80 sale to defendant; what the def't paid Porter the one thousand dollars for, nor what the contract was between Porter, the plaintiffs' alleged agent, and Wall, the defendant's agent, nor what was Porter's relation to the vendors at the time of the contract of purchase.

Third.

The findings of fact in the record are not such as the statute requires in causes tried and decided by the court, in this, they do not contain the ultimate facts or the conclusions of fact resulting from the proofs, but are an elaborate argumentative, partial statement

of such of those facts as support the defendant's theory of the case, mingled with legal conclusions.

The finding No. 12 is immaterial, and is no finding in the issue presented. A finding, as this is, "that no vein or lode of ore in place" were found, does not meet the plaintiffs' allegation of the finding of "a large body of rich and valuable ore."

Fourth.

On the facts found the plaintiffs are entitled to a judgment, and the decree entered against them was error, because they are insufficient to support the said decree in this form.

81 Fifth.

The supreme court of the Territory of Idaho erred in affirming the judgment of the district court.

JNO. R. McBRIDE,
J. G. SUTHERLAND,
Attorneys for Appellants.

(Endorsed:) In supreme court, Idaho Territory. John Synnott *et al. vs.* Michael Shaughnessy. Assignment of errors. Filed Sept. 7th, 1885. A. L. Richardson, clerk.

82 UNITED STATES OF AMERICA, *Territory of Idaho*, } ss:

I, A. L. Richardson, clerk of the supreme court of Idaho Territory, do hereby certify that the foregoing contains a true copy of the complaint, answer, finding (dist. court), decree, statement on motion for new trial, order denying motion for new trial, notice of appeal (to sup. c't of Idaho), undertaking on appeal (to sup. c't of Idaho), minutes of the supreme court, opinion, assignment of errors (supreme court), petition for appeal, allowance of appeal (to Sup. C't of U. S.), citation, undertaking on appeal to Supreme Court U. S. in the case of John Synnott *et al.*, appellants, against Michael Shaughnessy, respondent, lately decided in said court, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Boise City, in said Territory, this 14th day of September, 1885.

[Supreme Court Seal, Idaho Territory.]

A. L. RICHARDSON,
Clerk of the Supreme Court.

Endorsed on cover: Idaho Territory supreme court. No. 176. John Synnot and Joseph M. Burkett, administrator of Peter Welch, deceased, appellants, *vs.* Michael Shaughnessy. Filed October 21, 1885.

Office Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES.

October Term, 1888.

NO. 176.

JOHN SYNNOTT et al., Appellants,
vs.
MICHAEL SHAUGHNESSY, Appellee.

On Appeal from the Supreme Court of Idaho Territory.

J. G. SUTHERLAND,
JNO. R. McBRIDE,
Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

October Term, 1888.

NO. 176.

JOHN SYNNOTT et al., Appellants,
vs.
MICHAEL SHAUGHNESSY, Appellee.

On Appeal from the Supreme Court of Idaho Territory.

STATEMENT OF THE CASE AND BRIEF OF APPELLANTS.

The omission of the statement of the evidence from this record, and the submission of the cause on the findings of fact and conclusions of law, narrow the controversy to a comparatively small compass. The Supreme Court of Idaho was requested by the appellants to make findings on the evidence as provided for under the Act of Congress of April 7, 1874, but it was contended there by the defendant that it had no authority to do so. By failing to make findings on the evidence, which was then part of the record, it manifestly agreed with the defendant's views on that point—though we apprehend this was erroneous.

Stringfellow vs. Cain, 99 U. S., 614.

But as the judgment of the district court was affirmed, we suppose it will be assumed that the findings of that court were adopted.

In the absence of a formal entry of our request in the record, and an exception to the non-action of the Supreme Court, the error, if any there be, is probably not the subject of review here, and we submit it without further notice.

The errors assigned in this record are found on pages 40-41.

The first error assigned is also waived—the evidence upon which it was based having been omitted from the record.

The other error we shall observe upon after making the following preliminary statement:

First—

THE ISSUES IN THIS CASE.

The plaintiffs below and the appellants here, filed their complaint alleging, that on the 5th of July, 1881, they were the owners of a certain mining claim, situate in Mineral Hill Mining District, Alturas County, Idaho Territory, describing it, which had been before located by them, and set forth particularly the work which had been done for its development, and the results of such work—which was the discovery of a small vein of galena ore, estimated to be worth about $1,000 in market value. That at the date named the said owners were ignorant of the existence of any other vein or body of ore than that named, and disclosed in their development work, and that the claim was worth, from these developments, about $2,500, inclusive of the ore exposed. That about the 3d of July, 1881, the defendant, by his agents and employees, had discovered upon said claim, remote from the plaintiff's work, a large and valuable vein, or body of ore, from eighteen inches to four feet in thickness, extending about seventy feet continuously along the course of the vein, which made the mine worth about $100,000, and that the existence of this body of ore was wholly unknown to the plaintiffs. The plaintiffs then aver that the defendant, by his agents, conspired to cheat and defraud the plaintiffs, and concealed the knowledge of the existence of this vein and body of ore, and to that end represented to them that the claim did not contain any other vein or ore body than the one of which they had knowledge, in order to make purchase thereof at a price far below its real value. The complaint then alleges specially the means employed to deceive and mislead—consisting, among other acts, in corrupting a man by the name of Porter, who had been employed by them to sell the property. That Porter discovered this new ore body, and withholding his knowledge from his principals, communicated it to the defendant's agent, and on an agreement that if he should procure a sale to be made to defendant, he should receive the sum of $1,000, he did, violating his duty to his employees, induce said sale to be made, and that on the 5th of July, the conveyance was made to the defendant, and recorded on the following day.

It is alleged that large profits were made by the defendant out of the mine, the title to which was thus obtained, and an accounting is asked, and reconveyance of the property—the plaintiffs offering to return the purchase price, and submit to all equitable requirements as conditions thereof.

The complaint was filed on the 24th of May, 1882—about ten months after the conveyance to the defendant had been executed.

The answer of the defendant will attract attention as very curious, and unique in its structure, ingenious but not ingenuous. It denies on "information and belief," that the plaintiffs "believed" the claim to be worth, on the 3d day of July, 1881, the sum of $2,500, and alleges that they "had frequently endeavored to sell it for less," and on the day of the sale to the defendant, July 5th, "were glad" to sell it for $2,000, "until they were offered a few dollars more, for which they violated their agreement to sell at $2,000," alluding to a fact related in the evidence, as to certain negotiations at that price. He denies that before the purchase by him, his agents or employees had discovered any vein, "or body of ore," in the claim whatever, or knew of the existence of any vein or "body of ore" outside of the works of the plaintiffs. He denies all the allegations of fraud, concealment and suppression of facts, all misrepresentations in order to procure the conveyance at a price under its value. He follows this denial by alleging, that the plaintiffs "had ample means" of knowing the value of their claim, and were not induced to rely, and had "no right to rely" upon the defendant's agent, for any information concerning it—and that the defendant's knowledge consisted only of the "local and superficial aspects of the claim," by his agent. The defendant then proceeds to reiterate his former denial of concealment and fraud by his agents, alleges the real value of the claim at that time did not exceed $2,200, (the amount received by the plaintiffs,) again asserts that the plaintiffs had been for a "long time" "pretending" to work the same, and asserts that "if they failed to work it to profit, or to develop any ore body," unknown to them, or affecting its value, the fact was due to their own "neglect and laziness," etc., and winds up its sneer upon the plaintiffs in the paragraph, by a denial, that at the time of his purchase the "existence of said large" body of ore, or vein of ore, was known to him, (defendaut.) The answer then denies that Porter was employed by the plaintiffs, prior to the time of purchase, as an agent to sell the mine, and avers on "information and belief," that Porter had a "verbal option to purchase" the mine for $2,000, and that the owners had agreed with him to allow him all over that sum which he might be able to procure on any sale he might make.

The defendant then denies, that before the sale, Porter had made the alleged discovery, or concealed any such discovery, or for any consideration by the defendant paid to him therefor, informed him of its existence—denied that Porter was in the defendant's employment at the time of the sale, or agreed to, or did assist him in the purchase, and all and any kind of collusion with Porter; and again asserts that the plaintiffs, with "ample and exclusive means of knowing the value of the mine, and relying upon their own judgment, sold and conveyed it to defendant," receiving for it $200 more than they had agreed a few hours before, to accept.

The answer then proceeds in an independent way to state the "facts and circumstances" of the transaction, carefully therein suppressing the vital facts, as the findings and the evidence below show. These statements we will not reproduce here, referring the court to the record for them.

This brief outline of the pleadings shows that the issue between the plaintiffs and the defendant, so far as the plaintiff's right to recover on the merits is concerned, rested upon the averments in the complaint and the denials of them in this answer, viz:

First.—Did the defendant, with knowledge of the existence of a large "body of ore" in this claim, by his agent, who made the purchase, willfully mislead the plaintiffs in relation thereto, and induce them to sell for a price which they would not have sold for had they been truly informed of the facts?

Second.—Did the defendant, by his agent, (Wall) enter into an agreement, to pay the agent of the plaintiffs, Porter, a sum of money to conceal from his principals his knowledge of the existence of a valuable body of ore, which he had informed the defendant's agent of, and and then procure a conveyance from the plaintiffs of the claim in fraud of their rights?

The attempt of the defendant to make a diversion from these issues, by asserting that the plaintiffs had "ample means" of knowing the value of their property, and that the defendant's agent bought on "the superficial aspects" of the claim—and that he "saw that the said claim was well located in alignment with a known neighboring claim," that "the failure of the plaintiffs to find the ore;" was the result of "laziness," etc.,—may be dismissed without comment with the other "superficial" matter, which burdens this very remarkable pleading.

We come directly to the question which must be determined before any just judgment can be reached.

The findings of fact in this case are twenty in number—elaborate enough in quantity, we admit, but most so on immaterial and irrelevant matters, while painfully contracted, or entirely silent on the vital questions. Under the statute it has been well observed "that a finding" should consist of a concise and distinct statement of the several facts found, without any mixture of argument, or of the evidence from which the facts are found.

Ivins vs. Black, 30 Cal., 227.
Hidden vs. Indus, 28 Cal., 301.

The provision in the Idaho Practice Act, under which this trial took place, and these findings made, is in Laws of the Eleventh Session of the Legislative Assembly, p. 82, and reads as follows—being identical with the section of the Civil Practice Act of California (prior to 1861):

"Section 390.—Upon a trial of a question of fact by the court, its decision must be given in writing, and filed with the clerk, etc.

Section 391.—In giving the decision, the facts found, and the conclusions of them must be separately stated—judgment upon the decision must be sustained accordingly."

When facts are so obscurely found, or are so blended with legal conclusions as to render it doubtful whether the facts are only hypothetically stated, it must be disregarded as a finding of facts.

Figg vs. Mayo, 39 Cal., 262.

"The court should, in its finding of facts, find the material issuable facts, and not the *evidence* or *reasons* for the decision."

Bernal vs. Wade, 40 Cal., 663.

"Findings by the court should be statements of the ultimate facts in controversy, and the legal consequences of these facts. They should not include probative facts, or the reasons of the judge for his decision."

Matthews vs. Kinsell, 41 Cal., 512.

It is the duty of the court to find on *all the material issues*, and a failure to so find, leaves the cause in a condition in which no judgment can be permitted to stand.

Paulson vs. Nunan, 54 Cal., 123.
Kennedy vs. Busy, 52 Cal., 87.
Barnes vs. Cluffey, 54 Cal., 155.
Watson vs. Connell, 54 Cal., 91.
Swift vs. Cameron, 54, Cal., 417.
Dilla vs. Bohall, 53 Cal., 709.
Taylor vs. Reynolds, 53 Cal., 686.

It is not sufficient to find a probative fact from which it might be inferred that the court below was of a certain opinion as to the ultimate facts.

Kahn vs. Smelting Co., 102 U. S., 641.
Crews vs. Brown, 19 Wall., 70.
Frank vs. Edwards, 21 Wall., 147.

These authorities, and many others, support the proposition, that the findings must cover all the material issues, and must not be merely a *narrative of the evidence*, in whole or in part, but must contain clear, distinct, and definite responses to the different allegations tried. We have seen what the issues are, and we turn in vain to these so-called findings, to ascertain what the views of the court were on some of the most vital of them.

The findings are twenty in number, and are quite as remarkable for their silence as for their utterances. Let us refer to them:

The first finding is on a fact not in dispute, and may as well have

been devoted to the biography of the plaintiffs, and the kind of timber used in the construction of the "cabin," which the court found they built in the vicinity of their claim. What relevancy the excavation of the "four tunnels" they run on the claim, and the ore which they left unremoved had to the issue of fraud made in the case, is a puzzle to the understanding.

The second finding is a cross between a recitation of the evidence and a conclusion of fact. It states that there was a "proposal" by Synnott & Welch, to Porter, offering to give him a commission to sell the claim at a certain price, that he "replied," as soon as he got through with another negotiation about another claim, he would endeavor to find a purchaser on the terms proposed, and then adds, "but Porter was not invested with any authority to effectuate a sale, or bind Synnott & Welch by any contract." On the question in issue, it makes no finding, viz: Was Porter employed to sell, or negotiate for a sale—and only affects to be positive on a point not in issne—his power to bind the plaintiffs by contract. Except for its statement of evidence, this finding is as unimportant as the one preceding.

The third finding recites, that "pursuant" to this "proposal," showing the consequences of saying that there was an agreement, while reciting evidence showing that there was one. Porter entered into negotiation with one John Gilman, and pushing these negotiations he applied to E. A. Wall, the agent of the defendant, and made propositions for the sale of the claim, on certain terms to him. This finding is filed with details of evidence, and only shows by inference that Porter was acting as the agent, and negotiator of the plaintiffs, but evades any declaration of the ultimate fact of his agency—the real issue—it finds that Wall was the defendant's agent, which was not in issue, but scrupulousiy avoids determining the question whether Porter was the plaintiffs' agent—it is valuable here only for its recitation of evidence, and as a finding, fills no rule of a finding's requisites—and the most of the recitation of testimony relates to matters that are entirely foreign to the issue.

The fifth finding is a statement that is only valuable as showing, by inference, that Porter was acting for plaintiff, and that is not inferred from any direct finding to that effect.

The sixth finding resumes the relation of the evidence about Porter returning to the defendant's agent, "it being understood that negotiations with Gilman had ended," and the "purchase price was named" at $2,000; carefully avoiding any finding on the real question, as to the relation of Porter to the plaintiffs. It recites that Porter and Wall went over the claim, and "Porter showed Wall the float ore," and insisted on having one-fourth of the claim for showing the "float ore;" Wall wanted ten days to decide whether his principal, Shaughnessy, preferred to pay him $1,000—for showing this "float ore"—or allow him, Porter, one-fourth of the claim, and then, in the last para-

graph of the finding, with refreshing directness, finds that at the end of ten days "and after the purchase, Porter was paid $1,000."

The seventh finding continues this recital of testimony about spending half an hour in examining the claim in its "superficial aspects" of course, and then went to the "cabin," located by the first finding in convenient proximity, and an agreement for the sale was concluded with plaintiffs. Only a few moments were occupied in the transaction, and Wall returned to Bullion, whither the plaintiffs were to go after supper, to execute a conveyance and receive the price.

The eighth finding then recites, that shortly after Wall and Porter had left the cabin, Gilman returned and offered the plaintiffs a larger price than Wall had agreed to pay, and then told them that Porter had found "float," but that they did not agree to any terms. The necessity for this narration, except that having started out to journalize the whole matter, consistency and unity required that the Gilman negotiations should be spread out, as well as these with the defendant, does not appear. The elimination of the irrelevant from the material testimony, did not appear to have been recognized as either necessary or desirable.

The ninth finding relates, that shortly after Gilman's offer, Porter returned to the plaintiffs' cabin, and that he accompanied them to Wall's office, in Bullion, they telling him on the way down of Gilman's offer, and intimating that they could not afford to lose the $200, or pay any commission on the price; as they were poor, and would expect Wall, to pay $2,200 for the claim. There is no pretense of any finding of facts in this finding—it is simply a recitation of proofs.

The tenth finding is similar to the last—makes no finding of ultimate facts, but recites what took place when the plaintiffs asked Wall to pay the additional price, and adding that Wall said, "with some asperity, Gilman should not have the claim at any price," it is only valuable and useful for the one essential fact found that defendant agreed to pay $2,200, and for the negative inference that he had a great anxiety to complete the purchase promptly. Inasmuch as the pleadings had settled the amount which was paid for the property, we are not overcome with gratitude that the fact was found in a formal way—we are pleased at the generosity, however, which records so much of the transaction as reveals a strong motive for concluding an important purchase with such extreme haste.

The eleventh finding tells us of the execution of the deed and the manner of payment and even the fact that one of the checks delivered to plaintiffs was not cashed until long afterwards, is noted with the particularity that properly attached only to material matters. The fact that $3,200 was the purchase price, is omitted in this finding, though it was the proper place to have inserted it, and it is only incidentally stated in another and totally incongruous connection.

The twelfth finding seems to have been intended to meet the vital issue in the case, but falls short, as we shall show. It finds that

there was no evidence showing, or tending to show, that either Porter or Wall (the defendant's agent in the purchase) had discovered or knew of the existence of any *vein or lode of ore in place* on the claim other than that known to the sellers.

The thirteenth finds that the defendant, by Wall, his agent, dealt directly with the plaintiffs in the purchase, and not through Porter. This finding is in direct contradiction of the previous one which sets out Porter's part in procuring the sale, and the fact that he not only took part in it, but pocketed nearly one-third of the price.

The fourteenth finding negatives the allegation of fraudulent misrepresention by the defendant's agent at the purchase, and has the merit of directness—whether it can be regarded as consistent with other findings, we shall see hereafter.

The fifteenth is a mere reiteration of the twelfth and fourteenth findings, and must be regarded, accepting them as true, as unnecessary.

The sixteenth is an argument only—it refers to the long familiarity of the plaintiffs with their claim, reasserts their "better means and more ample opportunities" of knowing its value, as a reason why the defendant did not know what we assert he did. It has none of the essential requisites of a finding, and as an argument, does not deserve comment.

The seventeenth finding states some facts, and for the evidence it recites is valuable—the conclusions drawn from them, we insist, is not just or correct. We will comment on this finding in the argument.

The eighteenth, nineteenth, and twentieth findings are defective in form, but state facts of importance and materiality, and we shall seek to show that the effect of them has been misapplied in the conclusions of law which follow, viz:

That the plaintiffs had shown no facts entitling them to relief.

ARGUMENT.

To sum up the material facts as they are found, and discarding the matters which are improperly crowded into the findings, calling to our aid the admissions in the pleadings, the case may be stated thus:

The plaintiffs, Synnott & Welch, were the owners of the Eureka Mining Claim, the property about which the controversy exists, and lived in a cabin in the immediate vicinity. They had done a considerable amount of development work, and had found a small vein of ore, and had extracted through two or three tunnels along and upon it, about $1,000 worth of ore then lying on the premises, or disclosed in the claim. Welch, one of the owners, was in bad health, and both were poor. They desired to sell their claim, and entered into an agreement with one Porter, a short time before the 5th of July, whereby they agreed if he could find them a purchaser for the price of $2,500, they would pay him a commission of ten per cent. on the sale.

Porter, with a view to being able to represent the claim intelligently to any one who might desire to purchase, went over the ground about the 1st of July, and found that at a point outside of the work already done, there was a body of valuable ore, the float or croppings of which were lying on the surface. The extent of this "new find" does not appear in the findings, and in the absence of the testimony it is not proper to observe upon it, beyond what is there shown directly and inferentially. That it was valuable and important is evident from the fact, that within half an hour, as the findings show, after Wall had gone on the claim and seen the ore, he had concluded on a purchase, arranged a contract with Porter, seen the owners and made the contract. Expert miners, trusted by other men to make purchases in their discretion, do not make such hasty contracts upon simply a little "float" ore. The findings show that a sale of this claim for $150,000 was on the tapis in a very short time, and the circumstances of haste and anxiety of both Porter and Wall, to complete the transaction in a few hours, settles in all fair minds, the question of the existence of a "large body of ore" to the *knowledge* of the purchaser, and his aid-de-camp, in the business, Porter.

Returning from this digression—Porter the agent of the plaintiffs, upon finding this ore, approaches whom? not the owners, but one Gilman, and disclosing the fact of the new "find," takes him upon the ground. Gilman was impressed by Porter with the wisdom of silence about the "float," for while he mentioned it to Synnott & Welch, when he went to the cabin on the 5th of July, he refused to show it. Porter finding that delay would prevent him from securing the share in any sale which he had determined upon, beyond his commission, went also to Wall and told him the story of the "float" ore. Wall, the defendant's agent, coyly refuses to have anything to do with any purchase until the Gilman negotiation had closed, and when Porter returned shortly, and informed him that it was no longer pending, he went to the claim to examine it—not with the owners, whose cabin is only a few yards away, but with Porter alone. In less than half an hour he had seen the "float," determined that it was of value sufficient for him to buy for his principal without consulting him, goes *from the inspection* to the cabin, and makes the bargain.

At this point the seventeenth finding is important, and discloses that the agent of defendant misled the plaintiffs in regard to the value of the claim. He was paying them only $2,200, but in fact had agreed to pay Porter an additional $1,000, or give him one-fourth of the claim, and afterwards paid him the money within ten days. Deception as to what he was paying for the property was practised, and the reason is apparent.

On the night of July 5th, 1881, the conveyance was signed, and on the next day the plaintiffs went to Hailey to acknowledge the deed before a notary, and while they were absent the work of opening the

"new find" began, and within five days the defendant's agent bonded the claim for sale at $20,000, and in a few months a sale for $150,000 was on, and pending at the beginning of the plaintiffs' action.

In May, 1882, Welch having died during his absence from the Territory in search of health, Synnott, the surviving partner instituted this suit, and subsequently Burkett, the public administrator of the county, was added as a plaintiff, to represent the deceased partner.

The case presents two vital points:

First.—Did Wall, the defendant's agent, mislead the plaintiffs and induce them to part with their property for less than they would have done had they known the facts, which he knew at the time of the purchase?

Second.—Did Wall, as defendant's agent, through Porter, who was their agent, by corrupting him, mislead the plaintiffs and induce them to part with their title, when they would not, if informed of the facts, which Porter and Wall knew, have done so?

This is conceding that the case is to turn upon the findings, but before arguing upon them, we insist that the findings are insufficient, as observed in the opening, and that this judgment should be reversed for that reason, and we now examine this preliminary question briefly.

The allegation in the complaint is (p. 4, folio 10, of the transcript) "that on or about July 3, 1881, the defendant, by his agents and employees, had discovered upon a part of said Eureka Mining Claim, remote from the places where the plaintiffs had been at work on said claim, a large and valuable vein, or *body of ore*," etc. The denial in the answer of the defendant is specific, and is as follows: (Transcript p. 10, folio) "Denies, that about the 3d day of July, 1881, or at any time before he became the owner of said mining claim, this defendant, by his agents or employees, or otherwise, had discovered upon a part of said mining claim, remote from the places where said plaintiffs had been at work thereon, or at any place on said mining claim, a large or valuable, or any vein, *or body of ore* whatever," and denies that this defendant, by his agents or servants, or otherwise, ever discovered or knew of any vein, *or body of ore*, upon said mining claim, before he became the owner thereof, outside of plaintiffs' excavations. To this issue sharply made, the twelfth finding responds in this wise:

Twelfth.—The evidence in this case does not show, or pretend to show, that Wall or Porter, or any other person had discovered or known of the existence of any *vein, or lode of ore in place*, on the Eureka Mining Claim, other than such as had been found by, and was known to Synnott & Welch in their excavations, at any time prior to the sale," etc.

This does not meet the allegation. A "vein" or "lode," in the ordinary sense and in the sense used in this finding, is the vein inclosd by walls passing through a contiguous formation of country rock, and while legally it may be held to embrace any "ore body," it so seldom is used in that sense, that the case would be a special one

which would be within the definition. What we asserted in the complaint was, that the defendant had found a large "vein," or "*body of ore*," (if it was not a vein or lode, it was a valuable "*ore body*,") and the finding does not say, that the defendant did not know of the existence of a "large and valuable body of ore," but that he did not know of the existence of any *lode or vein in place* in the claim. For purpose of our recovery, this "ore body" may have been a mere "slide" from a lode, as such things are called by miners, and there have been no vein or lode when it was found on the surface, and yet, if it was valuable, it may have been neither a vein or a lode—may have been entirely seggregated from a lode—and still not affect our right to recover in this action. The finding, therefore, leaves the very substance of the issue; the knowledge of a "valuable body of ore" on the claim by the defendant at the time of his purchase, undetermined. It is an evasion of the issue. The other findings disclose the reason—the existence of the identical "body of ore" was known to both Porter and Wall, to Porter who had found it, and treacherously sold his knowledge of it for $1,000, and to Wall, the agent of the defendant who bought the property through Porter. (See 3d, and 6th Findings of Fact, pps. 12 and 13, Trans.)

There is but one reply attempted to this, and that is that the fifteenth finding, which states that "no concealment of any material fact concerning said mining claim, was ever made by the defendant, or any agent or employee of his." Such a finding is itself inadequate for any purpose, it leaves the question of what is a "*material fact*" undisposed of. Evidently the court believed that the knowledge of the existence of a large and valuable body of ore on this claim was immaterial, unless it was known then to be part of a vein or lode "*in place*," for it found that the ore *was there, and was known to both Porter and Wall before the sale.* The court may just as well have found that all the material allegations of the complaint were untrue, and disposed of the case on such a finding, as to render judgment on a finding like the one we are considering.

On another vital and essential issue the court does not respond in the findings. The plaintiffs allege in the complaint, (Folio 12, p. 5 of Transcript,) that: "Immediately prior to the discovery of this ore body by the defendant, they had employed one Henry Porter, as an agent, to find for them a purchaser of said Eureka Claim at $2,500, and relying upon said agent, and believing he would act honestly in their behalf, had agreed to pay said Porter 10 per cent. of said price in case of a sale procured by him," etc.

The answer denies this allegation, (Folio 22, p. 8 of Transcript,) and we look in vain into these findings for a response to this issue. The fact alleged in the complaint, that Wall was defendant's agent was admitted by the answer, and yet the findings assert this uncontroverted fact repeatedly, while the vital question as to Porter's relation to the plaintiff is nowhere directly met. The explanation of this is

simple, and probably not necessary. It is the practice of the trial courts in Idaho, to have the findings drawn by the party prevailing at the trial, and attorneys too frequently make them partisan and shape them to the supposed exigencies of the case instead of the findings which the law requires. The cunning hand of the defendant's attorneys in this action, are quite as apparent in these findings as it is in the defendant's pleadings. While they are entitled to more favor on judicial review, by reason of having been adopted by the court below, this tribunal will subject them to common sense treatment, especially when their inspiration is so clearly revealed on their face. In other respects these findings are open to the objection of being entirely insufficient, but as these features are particularly alluded to in the dissenting opinion of Justice Buck in this record, we pass by this preliminary matter.

Going to the question on the merits: Did Wall, defendant's agent, mislead the plaintiffs and induce them to part with their property for a sum which they would not have done, had they known the facts which he knew and concealed?

We admit that if he discovered ore of which they had no knowledge, he was not bound to disclose his own knowledge, if he used no artifice to mislead them, and did not influence them by anything there said or done. The rule laid down for the government of a party's conduct in such a case is thus stated:

"While the purchase of property in the absence of any relation between the parties thereto, other than that of vendor and vendee, may not be compelled to disclose any fact affecting the value of the property, known exclusively by him; he is in such case only *permitted to be silent;* if he speak, either as to matter of *fact* or *opinion*, he *must* speak the truth."

Pom., Eq., Juris., Sec. 901, 2-3 and notes.
Kerr on Fraud and Mistake, 42, 45, 98.
Bigelow on Fraud, 53, 27.
Story Eq., Sec. 192, 212, 214.
Roseman vs. Cameron, 43 Cal., 110.
Smith vs. Countryman, 30 N. J., 669.
Toney vs. Buck, 1 Green., N. J. Eq., 366.

Under such circumstances the party cannot, either by acts or words, mislead the injured party; "even a nod or wink" which has the effect to mislead the other party, will be ground for setting the transaction aside.

Kerr on Fraud, p. 98.

The finding on which the defendant relies for exculpation in this case, is the seventeenth of the series. Omitting the introductory part of it, and reading, (p. 15 of the Transcript) it says: "The only statement, or expression of opinion, on the part of Wall, or any agent of defendant in all the testimony of plaintiff Synnott, is as follows: 'I re-

marked to Wall that I thought I had made a mistake in running my tunnel, *that if I had run it more to the left*, I thought I would have cut the ledge.' Wall said, 'If the ledge *was there the tunnel ought to have struck it.*'" (There is a mistake in the printed transcript.) The finding proceeds: "This could not be deemed the misrepresentation of a fact. It was about a matter concerning which knowledge in its proper source, could not be had, and at most it must be deemed as the expression of an opinion merely," etc.—"but" closing the finding, "this was after the price of the claim and the terms of sale had been agreed on."

When Wall, an expert—trusted to buy property on his own discretion by his employer, one whose opinion would be always of weight and authority with ignorant prospectors, such as Synnott & Welch, said "that their tunnel would have cut the ledge if one was there," and tried to satisfy these men that further pursuit of it was idle, he was misleading them wilfully by the expression of an opinion which was not a real one, but was designed to influence them to make the sale. The testimony showing the extent and character of this misleading statement is not here, but the findings show elsewhere that the statement made was not his real opinion, but was the opposite of the *knowledge* he had acquired *by inspection* not twenty minutes before he uttered it; in other words, a misleading statement of a fact. But the tenth finding shows that while Wall was affecting to buy this property to keep Gilman from getting it, and saying to the plaintiffs, "with asperity, that he, Gilman, should not have it at any price," that he was misleading them willfully. He was not buying the old Eureka prospect, because as he affected to believe he *might find* a mine in it, but *he knew* from a *personal inspection*, and a knowledge of the discovery of a large body of ore cropping out on the surface, that he was securing it from its owners for a trifle of its real value.

But conscienceless as this conduct was, the fact that he was paying a traitor to these men $1,000 for his perfidious conduct, made him a direct party to the fraud which Porter was consummating in the sale, and no ingenuity is equal to the task of showing he did not aid and assist Porter in his nefarious and unprincipled conduct. It is the countenance, which men in responsible and trustworthy positions, such as Wall then held as a mine manager, give to such blackmailers as Porter, which enables them to do their work and get the reward of it. Wall knew what he was doing and what securing, and no one who goes "beneath the bark" of the facts in this case can doubt he contrived to deceive and mislead these plaintiffs into a sale which they *refused* to make to Gilman, and did make to him. *He made them believe* he was buying the claim *from* them, in fact he was buying of Porter. He made them believe that he paid the price to them, in fact he paid one-third of it to another, Porter, and yet it is said the plaintiffs were not deceived by defendant's agent! Does anyone suppose if the plaintiffs had known, or suspected that Porter was being paid to

bring about a sale, almost as much as either of them received, that it would have been consummated?

We say then, that these findings, fairly construed, show that the defendant's agent, Wall, did procure this property by misleading the plaintiffs, and that the false and general assertion to the contrary, is overcome by the *recital of facts* in the findings.

Second.

Did Wall, the defendant's agent, through Porter, who was plaintiffs' agent, by corrupting him, mislead the plaintiffs and induce them to part with their property when they would not have done so if informed of the facts, which Porter and Wall knew and concealed from them?

Our argument on this point assumes that Porter was employed by the plaintiffs to find a purchaser, that they understood at the time of this sale that he was acting in their behalf, and that Wall, defendant's agent, knew of his relation to them, and did what he did, with a full knowledge that Porter was deceiving them, and he was profiting by the perfidy. We assume this, and we claim that the recited facts in these findings clearly show it, though they do not disclose it directly.

Referring to the findings, it appears by the second finding of facts that prior to this sale a few days, the plaintiffs "proposed" to Porter that if he would find a purchaser for the claim at a price named, they would give him 10 per cent. commission on the sale, and that Porter replied, as soon as he could get through with the Homestake negotiation, then pending, he would endeavor to find a purchaser.

The third finding then goes on to recite that "pursuant" to this "proposal," Porter did endeavor to find a purchaser, and opened up negotiations with one Gilman, and also with Wall, defendant's agent. The fifth, sixth, seventh, eighth, ninth, tenth and eleventh findings all recite what the evidence shows Porter did, and establish so far as a recitation of facts can establish it, that Porter claimed to be, and was acting, nominally as the employee, negotiator and mouthpiece of the plaintiffs to the extent of finding a purchaser and procuring and bringing about the sale. While it clearly was the duty of the court from these facts recited, to have distinctly found that he acted as and was the agent and employee of the plaintiffs, no one can fail to know, who credits the recital given, that he was their agent, and that the man who used him, Col. Wall, as a go-between, knew his relation to them fully, and proceeded to corrupt him.

If he did not so understand himself to be their agent, why should he have gone to the claim and examined it, and why hunt up Gilman and offer to sell to him, and at the same time apply to Col. Wall to become a purchaser? It matters not that he misstated the terms of his employment to Wall, as he probably did, the fact of his employment

is the material one, and that Wall was aware of it. The evidence in the findings shows that both to Gilman and Wall he disclosed his position as that of a negotiator for the sale, and both well knew that he occupied that position and had been entrusted with it.

There is a cunning effort made to escape the consequences of this state of facts on the part of the defendant. It is by attempting to show that Wall bought *directly* of the plaintiffs. Seared as the consciences of men sometimes become to the crime of the betrayal of a personal trust, there is a desire to appear to be honest for the sake of the virtue which the world respects, and if the prefidy of Porter to his principals in this case, could be hidden by having Wall cunningly buy directly from them, while Porter would get the fruit of his treachery, it was natural that both Wall and Porter should consummate the fraud in that way. Equity, however, tolerates no such devices or subterfuges, it lays hold of the real transaction and allows no sham arrangement to turn justice aside from her purpose to get at the truth. This scheme might have turned the hand of justice away but for the admitted and damnable fact, that Wall agreed *before he went to the plaintiffs to buy the claim*, to give Porter $1,000 as compensation for his showing him the "float ore," or one-quarter interest in the purchase. The semblance of buying from Synnott & Welch, while he had conspired with Porter to help him defraud them, is too transparent a trick to deceive any honest mind. The wary defendant equally well knew that it would not do to allow Porter to have the wages of his sin in the open ownership of an interest in the mine, and wisely paid him his "thirty pieces of silver" and dismissed him to the tortures of his own conscience.

The truth gathered from this record is too plain for any reasonable doubt. That Porter having, while in the employ, and being the trusted agent of the plaintiffs, found a body of ore in their mine of which they had no knowledge, instead of communicating the fact to them, as it was his duty to do, commenced to scheme to defraud them by procuring them to sell to some one who would pay him for finding the bargain in this fraudulent way. That he showed it to Gilman under injunctions of secresy and concealment, is admitted; that he took Wall to the ground directly for the purpose of seeing the new find, is shown, and that the plaintiffs knew anything of its then condition is not pretended; that he made his terms with Wall *before going*, and *before the conveyance* is shown in the findings; that he hovered around the plaintiffs, presumably at Wall's suggestion, making no less than three trips to the cabin and claim on the day of sale, and watched them until it was concluded; that having their confidence, he was used by Wall to bring it about, *knowing he was acting the traitor to those who trusted him*, and aiding to rob them of their property, while pretending to be their friend, and finally accomplished his design, and pocketed the reward—all of this is too plain even by these findings to admit of any reasonable doubt in the judicial mind,

After spreading the facts out in this record, which make these conclusions irresistible, how impotent to deceive is any general statement such as that made in the twelfth, fourteenth and fifteenth findings. They are puerile efforts to turn aside the force of actual admitted facts.

It is true that from the finding of a little ore at a given spot, the miner does not always know the extent or value of the find, or that a "vein or lode exists" there, but he judges of the importance of his discovery by other surrounding circumstances. These circumstances, unfortunately for these defendants, are disclosed in this case, and show why Col. Wall who made this purchase on such a showing, *knew* its vast importance. First, he knew, as the findings disclose by the "alignment of the claim with the Idahoan Mine" lying adjoining, a vein of known value, that somewhere in the claim the Idahoan lode would be found. Second, the character of the "float," which he admits prompted his purchase, was such that any miner would know that it was no stray bunch of ore, but was conclusive evidence that this immense Idahoan vein had its continuation there or in the vicinity. Boulders of galena ore, six and eight inches, lying loose on the surface, are such a proof of a large body of ore that no miner waits to find the "*vein or lode*," but at once *knows* he has discovered a valuable deposit. Wall knew as well when he saw this "float," which is so belittled by his attorneys, that he *had knowledge* that justified the purchase as he knew two days after, when he had uncovered a body of ore seventy feet long, and from eighteen inches to four feet in thickness. The quibble about having no "knowledge" of the existence of the vein because it had not then been opened out, excites only indignation at the attempt to impose on common intelligence. It is not unlike that other piece of special pleading found in the seventeenth finding, that "it was a matter about which knowledge, in its proper source, could not be had," referring to the existence of a lode not actually disclosed. One might as well aver that the Mississippi did not to his "knowledge" enter the sea, because he had not passed over the bar into the Gulf of Mexico.

Upon this state of the case then what is the law?

We maintain that the conclusions of law arrived at by the court, are not sustained, and that the plaintiffs are entitled here and were entitled below to judgment.

Wharton on Agency (Sec. 697) says:

"Whenever the interposition of a middle-man or go-between is used to effect a contract, there brokerage exists."

To the same effect see

Story on Agency, Sec, 28, 31, 109.
Paley on Agency, p. 13.
Brown et al. vs. Pfarr, 38 Cal. 550.

"When a purchaser enters into any side contract or arrangement with the agent or broker of the seller, unknown to the latter, by which

they mutually, or either of them procure a benefit to themselves, such an arrangement *per se* renders the sale fraudulent, and avoids it at the option of the seller."

Wharton on Agency, Sec. 244-5.
Story on Agency, 5th Ed., Sec. 211.
Ballman vs. Loomis, 3 Cent. L. Jour., 263.
Moore vs. Maudlebaum, 8 Mich., 423.
Eberhart vs. Searle, 71 Pa. St. 256.

"When in the contract of sale there is a concealment of any material fact by any collusion between the agent, or broker of the seller and the purchaser, which affects the vendor of the property, *whether the agent be a gratuitous one, or has compensation*, or any understanding express or implied by which the *agent or broker is to profit by the sale*, without the knowledge and consent of the seller, the contract and sale are void *per se*, and will be set aside on the petition of the vendor."

1 Story Eq. Juris., Sec. 218, 222.
2 Pom., Eq. Juris., Sec. 902, 959, and Notes.
Panama & South Pac. Tel. Co. vs. India.
Rubber Gutta Percha Works Co., 14 Eng. Rep. (Moak) p. 759 and Notes.
Lindsay P. Co. vs. Head, 8 Eng. Rep. (Moak) 180, 1 Lead., Case in Eq., 110.

These authorities could be added to almost indefinitely, but we do not consider that the law is in any sense in doubt.

Bigelow says, page 403:

"The mere fact that a reasonable consideration is paid, and that no underhand advantage is taken is not of itself sufficient. Any unfairness, any underhanded dealing, *any use of knowledge not communicated to the principal, any lack of perfect good faith* which equity requires, render the transaction voidable, so that it will be set aside at the option of the principal."

Not only did the agent in this case, as well as the vendee, conceal from the plaintiffs the fact that their agent and the vendee had entered into a *side contract whereby they profited*, but the vendee concealed from plaintiffs important facts within *his knowledge*, which materially affected the value of the property, and by the haste with which he concluded the arrangement, and the way he induced them to rely on his opinion (nominally) about their work, fully brought himself within the rule which avoids a contract so made. "The purchase of property through an agent, when there was no necessity for the services of an agent, is a badge of fraud and requires explanation."

Black vs. Campbell, 12 Am., Dec., 342.

Now there was an attempt to escape by pretending to purchase

direct, though in fact through an agent, whom the purchaser had corrupted. Much more does such a transaction require explanation.

These observations cover the important points which this court will be called upon to decide in this cause, and while much might be added by way of support to our views, we rest the case here without further argument.

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